Redevelopment Agency Dissolution Trailer Bill

Presented by the Department of Finance
for
Assembly Budget Subcommittee No. 4

March 3, 2015

How Did We Get Here?

Key Legislation And Events

- ABx1 26/27 Signed Into Law On June 28, 2011 (Effective Date)
  - ABx1 26 Dissolved RDAs And ABx1 27 Provided For An Alternative Voluntary Redevelopment Program
- *California Redevelopment Association v. Matosantos*
  - Lawsuit Filed Directly with California Supreme Court
  - ABx1 26 Ruled Constitutional and ABx1 27 Ruled Unconstitutional
  - RDAs Officially Dissolved as of February 1, 2012
- AB 1484 Signed Into Law On June 27, 2012 (Effective Date)
  - Clarified Existing Law And Put Into Place An Improved Structure To Manage The Winding Down Of Activities

What Has Been Accomplished?

Successor Agencies

- Started With 401 Successor Agencies
- Currently 383 Active Agencies
- 18 Have Been Completely Dissolved

Recognized Obligation Payment Schedules (ROPS)

- 7 ROPS Cycles Have Been Completed
- 792 Meet And Confer Sessions Have Been Held
- 8th Review Cycle Currently Underway

Due Diligence Reviews (DDRs)

- 383 Low And Moderate Income Housing Fund (LMIHF) DDRs Completed
- 382 Other Funds And Accounts DDRs Completed

What Has Been Accomplished?

Finding Of Completions

- 338 Finding Of Completions Have Been Issued
- 40 Agencies Have Not Paid Their DDR Amounts
- 3 Agencies Have Not Completed The DDR Process

Long-Range Property Management Plans (LRPMP)

- Plans Submitted Within 6 Months Of Receiving Their Finding Of Completion
- 305 Plans Have Been Submitted
- 204 Plans Have Been Approved

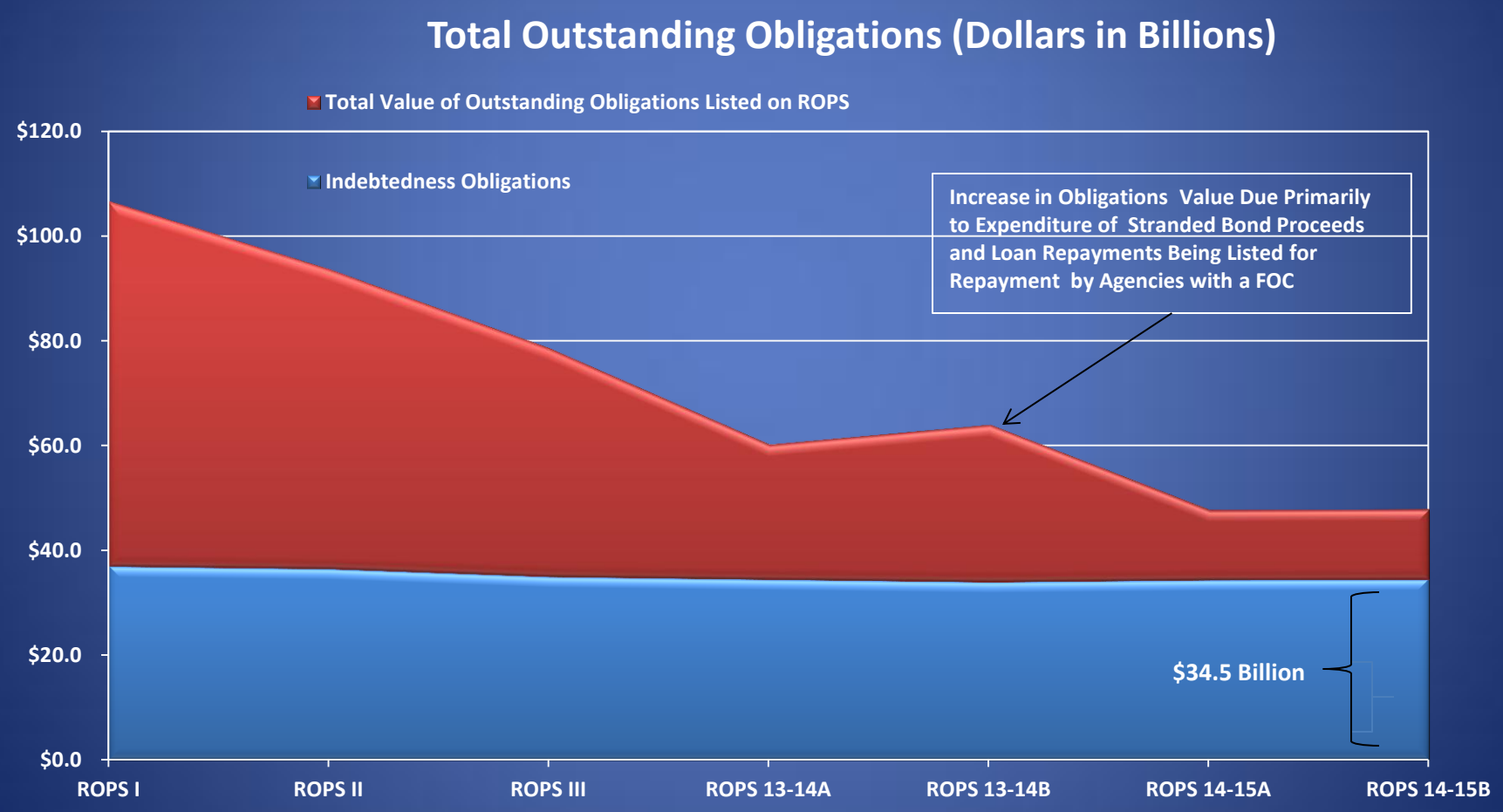
Final And Conclusive Reviews

- 41 Requests Have Been Received
- 38 Approvals To Date

Oversight Board Actions

- Approximately 1,750 Actions Have Been Reviewed

Are Agencies Winding Down?



The Fiscal Results Of Dissolution

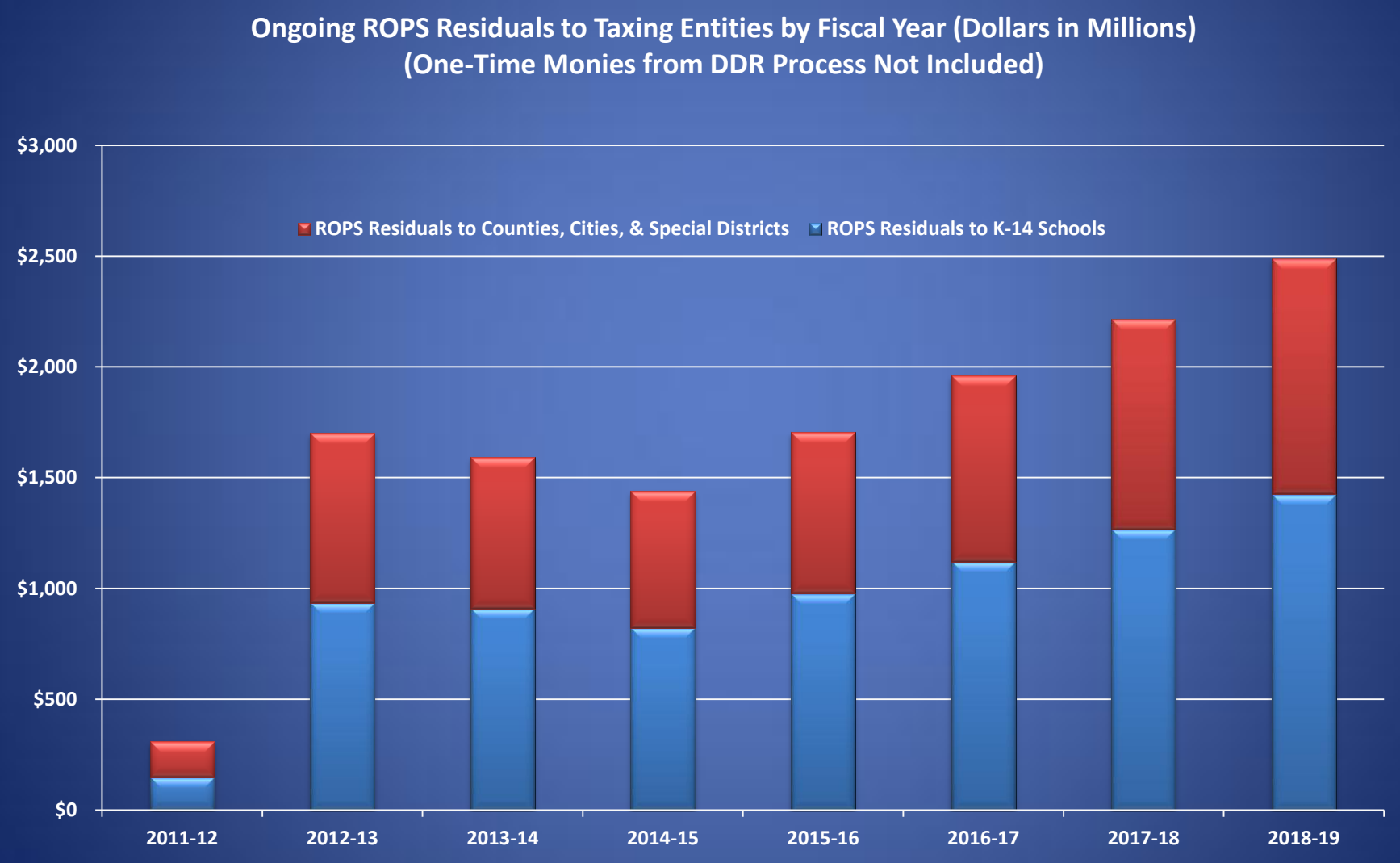
Property Tax Returned To Counties, Cities, and Special Districts:

- Counties $1.3 Billion, Cities $1 Billion, & Special Districts $426 Million Returned In 2011-12 through 2013-14
- Counties $657 Million, Cities $587 Million, & Special Districts $204 Million Estimated To Be Returned in 2014-15 & 2015-16
- Ongoing, Finance Estimates More Than $665 Million, Growing Each Year, Will Be Annually Distributed To These Entities
- This is Unrestricted Revenue For Local Governments That Can Be Used On Core Public Services

Property Tax Returned To K-14 Schools:

- $3 Billion Returned In 2011-12 through 2013-14
- $1.9 Billion Estimated By Finance Be Returned In 2014-15 & 2015-16
- $1.0 Billion, Growing Each Year, By 2016-17
- Each dollar received by schools generally results in a corresponding Proposition 98 General Fund savings for the state.

The Fiscal Results Of Dissolution



Litigation Update

- Superior Court
  - 208 Suits Have Been Filed Since Passage Of ABx1 26/27
  - 125 Cases With Rulings Or Outcomes Considered Favorable (Writs Denied, Favorable Tentative Decisions, Cases Dismissed, Stipulated Judgments Initiated by State, & Settlements)
  - 19 Cases With Partial Rulings In Favor Of The State
  - 9 Cases With Ruling Against The State (Writs Granted /Tentative Decisions Against The State)
  - 29 Active Cases Pending Hearing In Superior Court (Primarily DDR And Enforceable Obligation Cases)
  - 27 Cases Have Been Filed But Are Not Considered Active (No Hearing Date Has Been Set)

- Appellate Court
  - 46 Cases Are Currently On Appeal (13 By State and 39 By Cities)

- Appearances Are Not Always What They Seem
  - The 208 Suits Filed Represent But A Fraction Of Total Finance Determinations.
  - Approximately 20,000 Determinations Have Been Made On ROPS, DDRs, Oversight Board Actions, Final and Conclusive Requests, & Housing Asset Transfers
  - Litigation Is Only Contesting only 1 Percent Of Finance Determinations

Litigation Update (Key Issues)

Reentered Agreements Litigation

- A Handful Of Cities And Two Counties Reentered Into Agreements For One of Two General Purposes:
  - To Do ***NEW*** Redevelopment Work That Hadn't Started Before Dissolution—***NO ENFORCEABLE OBLIGATION EXISTED PRIOR TO THE PASSAGE OF AB X1 26***
  - To Sweep/Encumber Cash, ***THAT WAS ALREADY REQUIRED TO BE REMITTED TO THE TAXING ENTIES***, From Their Former RDA Under The Guise Of Loan Repayments (Statute Provides An Alternate Formula For The Repayment Of Legal Loans Of Money Between A City And Their Former RDA)
- There Have Been 17 Court Cases Filed Over The Inappropriate Use Of Reentered Agreements
  - 4 Cases Ruled In Favor Of State and 1 Case Dismissed Due To Settlement
  - 9 Cases Ruled Against State—Emeryville, Riverside, Sonoma County, Twentynine Palms, Union City, Coronado, San Leandro, Danville, and Santa Rosa
  - 3 Cases Still Pending At Lower Court—Sonoma County, Citrus Heights, And Loma Linda

Sales and Use Tax (SUT) Withhold Authority And Proposition 22 Cases

- Bellflower (SUT Withhold Is Constitutional) And League Of California Cities (SUT Withhold Is Unconstitutional)—There Are A Few Other Cases Raising Similar Issues
  - Most SUT Withhold Cases Are Pending In the 3rd DCA—A Few Have Been Fully Briefed
  - There Is Approximately $240 Million In Illegal Transfers Still Being Shielded And Would Be Recoverable Under This Mechanism
- It Is Argued That The DDR Claw-Back Violates Prop 22 And Is Unconstitutional
  - State Has Prevailed At Lower Court In All Cases
  - Several Suits Have Been Appealed By Cities To The 3rd DCA—Cases Pose Significant Fiscal Risk

Why Make Changes Now?

- Most SAs Have Reached An Understanding On What Is And Is Not An Enforceable Obligation
- Some Of The Statutory Mechanisms Were Prescriptive To Ensure Uniform Implementation Of A New And Highly Complex Process
  - Since The Process Is Now Well-Established After Three Years Of Diligent Work, It May Be Possible To Streamline Some Parts
- The Transition To Countywide Oversight Boards On July 1, 2016, Will Make The Current ROPS Process Cumbersome In Some Counties
- Clarifying Points Of Law That Some Claim Are Unclear Will Ensure SAs Have Sufficient Revenue To Pay Their Enforceable Obligations And Will Negate The Need For Costly And Frivolous Litigation

What Is Being Proposed?

- Trailer Bill Legislation Is Being Proposed To Gradually Transition The State Away From Its Current Detailed Oversight Role

- The Legislation Meets The Following Objectives:
  - Minimizes The Erosion Of Property Tax Residuals Being Returned To The Local Affected Taxing Entities (Both In The Short And Long Term)
  - Transitions The State From Detailed Reviews Of Enforceable Obligations To A Streamlined Process
  - Clarifies And Refines Various Provisions To Eliminate Perceived Ambiguity Without Rewarding Previous Questionable Actions
  - Maintains The Expeditious Wind-Down Requirement While Adding New Incentives For Substantial Compliance

What Does The Trailer Bill Do?

- Transitions All Successor Agencies (SAs) To An Annual ROPS Process Beginning July 2016
  - The Annual ROPS Will Be Mandatory
  - The First Annual ROPS Will Be Due To Finance On February 1, 2016
  - The Loan Repayment Interest Rate Will Increase From The Current LAIF Rate To 1 Percent
  - Adds Additional Criteria Related To The Calculation Of The Administrative Cost Allowance
  - Clarifies That Loans For Enforceable Obligations Should Only Be Made When Insufficient Funding For The ROPS Period Is Distributed To The SA And Clarifies Repayment Terms Of Such Loans—There Is No Other Reason A SA Should Need A Loan Other Than To Cover An Insufficient Funding Scenario
  - Specifies That ROPS Items Subject To Active Litigation Are Not Required To Be Disputed Through The Meet And Confer Process
  - Adjusts And Defines The Process/Timelines For Prior Period Adjustments

What Does The Trailer Bill Do?

- Allows SAs With A Finding Of Completion To Transition To An Optional "Last And Final" ROPS Beginning January 2, 2016
  - The Last And Final ROPS Will Be Available To SAs With Which There Is Full Agreement On What Items Are Enforceable Obligations
  - We Estimate 131 SAs Now Qualify For The Proposed Last and Final ROPS
  - Once Approved, The SA Will No Longer Submit A ROPS In Future Periods—Instead, The County Auditor-Controller Will Remit Funds To The SA In Accordance With The Last And Final ROPS And Finance Will Be Removed From The Process
  - SAs Will Receive Accelerated Monetary Loan Repayments That Have Been Approved— The Loan Repayment Interest Rate Will Be Increased To 2 percent
  - SAs May Amend Existing Agreements, Under Specified Criteria, Without Having To Obtain Oversight Board Or Finance Approval
  - SAs Will Not Have To Seek Approval From The Oversight Board For Most Things, Once They Have An Approved Last And Final ROPS

What Does The Trailer Bill Do?

- Makes Oversight Board Process Improvements
  - Eliminates Various Oversight Board Resolutions From Having To Be Submitted To Finance For Review And Approval
  - Defines The County Auditor-Controller's Responsibilities Related To The New Countywide Oversight Board
  - Clarifies When An Oversight Board Is Considered Dissolved
  - Allows County-Auditor Controllers To Recover Costs Associated With Their Responsibilities
- Defines The Dissolution Of Successor Agencies
  - Outlines The Final Dissolution Process For SAs Once All Enforceable Obligations Have Been Retired
  - Clarifies That A RDA That Was Never Allocated Property Tax Revenue Prior To February 1, 2012, Is Considered Dissolved

What Does The Trailer Bill Do?

- Increases Transparency And Funding Of/For The Low And Moderate Income Housing Asset Fund (LMIHAF)
  - Requires All Legal LMIHF Deferrals Are To Be Repaid Into The LMIHAF
  - Makes The LMIHAF Annual Reporting More Transparent
- Protects Bond Holders And Sponsoring Entity/RDA Loan Repayments
  - Clarifies Pre-Dissolution Statutory Tax Increment Caps And Project Area Time Limits Do Not Apply For Purposes Of Paying All Enforceable Obligations
  - RDA And Creator Agreements Involving Bond Refinancing That Occurred Between January And June Of 2011 May Be Eligible For Payment As An Enforceable Obligation

What Does The Trailer Bill Do?

- Other Dissolution Process Improvements
  - Establishes A Review Timeline For Final And Conclusive Determinations And Broadens Its Application To Include Other Revenue Sources
  - Allows “Public” Parking Lots To Be Defined As A Governmental Purpose Property For The Purpose Of Transferring To The Sponsoring Entity Under Certain Circumstances
  - Allows One Revision To An Approved LRPMP To Include The Transfer Of Public Parking Lots As Governmental Purpose
  - Provides That A Successor Agency Shall Submit An Oversight Board Approved LRPMP To Finance Even If The Successor Agency Has No Properties To Dispose Of

What Does The Trailer Bill Do?

- Makes Clarifications To Address Perceived Ambiguities In Current Law
  - Agreements Entered or Reentered Into Between The SA And The Entity That Created The Former RDA Are Not Enforceable Obligations, Unless They Were For Administrative Services
  - Litigation Expenses Associated With Challenging The Dissolution Statutes, Or Decisions Attendant Thereto, Must Be Paid From The SA's Administrative Budget And Are Not Stand-Alone Enforceable Obligations
  - Clarifies The Definition Of A Loan For Sponsoring Entity Monetary Loans That Were Provided To The Former RDA
  - Application Of The Administrative Procedures Act
  - All Statutory And Contractual Passthrough Obligations Of The Former RDA End When All Enforceable Obligations Have Been Retired

What the Trailer Bill Does Not Do!

- It Does Not Prevent SAs, Cities, Or Counties From Pursuing Legal Action Against Finance
- It Does Not Provide Finance With A New Exemption To The Administrative Procedures Act
- It Does Not Prevent SAs From Fulfilling Contractual Obligations Related To Enforceable Obligations
- It Does Not Reward, At The Expense Of Other Local Agencies, The Handful Of SAs That Reentered Into Agreements With Their Sponsoring Entities In A Manner Contrary To Legislative Intent
- It Does Not Impose Time Limits Or Other Barriers To Prevent The Full Repayment Of Legally Recognized Monetary Loans That Sponsoring Entities Provided To Their RDAs
- It Does Not Prevent Sponsoring Entities From Loaning Funds To The SAs For The Fulfillment Of Enforceable Obligations Approved On A ROPS
- It Does Not Prevent The Full Repayment Of Monies RDAs Legally Borrowed Or Deferred From Their LMIHF To Pay ERAF Or Other RDA Obligations

What Is The Fiscal Impact Of The Proposal?

Net Loss Of Approximately $127 Million State General Fund

- Benefits To Local Agencies And The State
  - Reentered Agreements Clarification
  - Litigation Expenses Clarification
  - Administrative Cost Calculation Variation
  - Estimated State General Fund Benefit Of Approximately $64 million
- Benefits To Successor Agencies And Housing Successor Agencies
  - Prior Period Adjustments Suspension During Transition To Annual and Last and Final ROPS
  - Public Parking Lots As "Governmental Purpose" Assets
  - Tax Increment Cap And Time Limit Clarification
  - Post-2010 Bond Refinancings
  - Accelerated Loan Repayments Under Last And Final ROPS And Increase In Interest Rate
  - Reduced Interaction With Oversight Board Under Last And Final ROPS
  - Repayment Of Other Deferrals From The LMIH Into The LMIHAF
  - Estimated State General Fund Loss Up To $200 million
- Other quantified costs
  - Approximately $17 Million Per Year For County Auditor-Controllers Or Their Designee To Staff Countywide Oversight Boards
  - Estimated State General Fund Loss Of $8.5 million

Are Other Issues Open for Discussion?

- The Administration Is Prepared To Discuss All Aspects Of The Proposal With Stakeholders, Including (**But Not Limited To**) The Following Issues That Are Currently Unaddressed By The Proposal, But Are Being Thoroughly Examined By Finance:
  - The Expenditure Of "Stranded" Proceeds From Bonds Issued After December 31, 2010
  - The Disposition Of Pension Override Levy Revenues Received By The SAs
  - The Appropriate Interest Rate To Use In Calculating Sponsoring Entity Loan Repayments
- The Administration Will Provide Updated Language At The May Revise Based On Feedback From Stakeholders
- This Will Be A Comprehensive And "Balanced" Proposal To Address Remaining Dissolution Related Topics
- Any Updates To The Proposal Will Fit Within the Core Objectives Previously Stated