Hearing Date: September 27, 2013
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ITEM 3

TEST CLAIM
FINAL STAFF ANALYSIS

AND

PROPOSED STATEMENT OF DECISION

Health & Safety Code Sections 33681.12, 33681.13, 33681.14, 33681.15; Revenue & Taxation Code Sections 96.81, 97.75, 97.76, 97.77, 97.31, 98.02, 97.68, 97.70, 97.71, 97.72, 97.73

Statutes 2003, Chapter 162 (AB 1766); Statutes 2004, Chapter 211 (SB 1096); Statutes 2004, Chapter 610 (AB 2115)

Accounting for Local Revenue Realignments

05-TC-01

County of Los Angeles, Claimant

Attached is the draft proposed statement of decision for this matter. This draft proposed statement of decision also functions as the draft staff analysis, as required by section 1183.07 of the Commission's regulations.

EXECUTIVE SUMMARY

Overview

This test claim alleges reimbursable state-mandated increased costs incurred by counties as a result of the administrative activities required to implement three revenue-shifting programs instituted by the Legislature: the Education Revenue Augmentation Fund (ERAF III) shift; the Vehicle License Fee (VLF) Swap; and the Triple Flip.

Procedural History

This test claim was submitted on August 12, 2005, establishing an eligible period of reimbursement beginning July 1, 2004. On June 9, 2008, the claimant submitted supplemental documentation regarding fee authority provided in the test claim statutes. On May 30, 2013, Commission staff issued a draft staff analysis and proposed statement of decision. On June 6, 2013 the claimant requested an extension of time to file comments and postponement of the hearing, which was granted. On July 10, 2013 the Department of Finance submitted comments on the draft staff analysis. On July 19, 2013 the claimant submitted comments on the draft staff analysis.

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. "Test claim" means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class

actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6. In making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.[1]

Claims

The following chart provides a brief summary of the claims and issues raised and staff's recommendation.

Subject	Description	Staff Recommendation
Property Taxes/ERAF III Shift for Counties, Cities, and Special Districts - Revenue and Taxation Code sections 97.31, 97.71, 97.72, 97.73, 97.77, 98.02, as added or amended by Statutes of 2004, Chapter 211 (SB 1096), and Statutes of 2004, Chapter 610 (AB 2115).	Section 97.71 requires a county auditor to reduce, for the 2004-2005 and 2005-2006 fiscal years, and by an amount determined by the Controller, the total amount of revenue required to be allocated to a city, county, or city and county under section 97.70, and deposit that amount in the county ERAF, to be allocated as provided in section 97.3. Sections 97.72 and 97.73 require a county auditor to reduce, in the 2004-2005 and 2005-2006 fiscal years, and by an amount determined by the Controller, the total amount of ad valorem property tax revenue otherwise allocated for each enterprise special district, non-enterprise special district, and joint-county special district, and deposit that amount in the county ERAF, to be allocated as provided in section 97.3. Section 97.31 provides for DOF to direct the county auditor to reduce the amounts otherwise required to be transferred to the	*Partially approve* –The activities required of the county under sections 97.71, 97.72 and 97.73 impose a reimbursable state-mandated program on counties for the 2004-2005 and 2005-2006 fiscal years only, to reduce revenue otherwise required to be allocated to each county, city, and special district, in amounts determined by the Controller, and deposit those amounts in the county's ERAF. Section 97.31, as amended, imposes requirements related to the 1993-1994 fiscal year; and does not result in increased costs mandated by the state during the period of reimbursement for this test claim. Section 97.77 prohibits an activity by a special district, and therefore does not impose any mandated activities. Section 98.02 is amended to delete a requirement of the former statute, and therefore does not impose any new mandated activities.

[1] *City of San Jose v. State of California (1996)* 45 Cal.App.4th 1802.

	ERAF for the 1993-1994 fiscal year. Section 97.77 provides that a special district shall not pledge any ad valorem property tax revenue that would otherwise be dedicated to the reduction required by sections 97.72 and 97.73. Section 98.02, as amended by Statutes 2004, chapter 211, deletes a requirement of the county auditor's calculations.	
Property Taxes/ERAF III Shift for Redevelopment Agencies - Health & Safety Code Sections 33681.12, 33681.13, 33681.14, 33681.15, as added or amended by Statutes of 2004, Chapter 211 (SB 1096), and Statutes of 2004, Chapter 610 (AB 2115).	These statutes require redevelopment agencies to remit an amount determined by DOF to the county auditor for deposit in the county's ERAF, prior to May 10, for each of the 2004-2005 and 2005-2006 fiscal years. If a redevelopment agency is unable to remit the amount determined, the agency may seek the assistance of the city or county; if the agency is still unable to remit the required amount, the county auditor may transfer the amount required from the city or county's property tax allocations. Alternatively, the redevelopment agency may enter into an agreement with a joint powers entity to pay the amount required with bonds issued, to be repaid by the agency.	*Partially Approve* – Activities required of the county auditor to receive, and if necessary, collect, the revenues required and deposit the amounts in the county's ERAF impose a reimbursable state-mandated program during fiscal years 2004-2005 and 2005-2006 only. In addition, section 33681.15 imposes a reimbursable state-mandated program on counties, which may continue after the 2005-2006 fiscal year, to secure timely payment by a redevelopment agency on loans financed by bonds issued under the section to make the ERAF payment.
VLF Swap – Revenue and Taxation Code sections 97.70, 97.76, 96.81, 98.02, and 97.75, as added or amended by Statutes 2004, Chapter 211 (SB 1096), and Statutes 2004, Chapter 610 (AB 2115).	Section 97.70 requires each county to establish a Vehicle License Fee Property Tax Compensation Fund, and requires a county auditor to reduce, beginning in the 2004-2005 fiscal year, the total amount of ad valorem property tax revenue otherwise required	*Partially approve* –The adjustments and reductions required by section 97.70 mandate a new program or higher level of service on counties. The county is not required to perform the calculations to determine the amounts of reductions or

	to be allocated to a county's ERAF, by the countywide VLF adjustment amount, and deposit that amount in the Vehicle License Fee Property Tax Compensation Fund, which the county auditor shall then distribute, as specified. For the 2004-2005 and 2005-2006 fiscal years, section 97.76 requires the Controller to determine the countywide vehicle license fee adjustment amount, and the VLF adjustment amounts for each city and county. Beginning in 2006-2007, pursuant to section 97.70, the county is responsible for its own calculations of the VLF adjustment amounts. Section 96.81 provides that property tax apportionment factors applied between 1993 and 2001 are deemed correct. Section 98.02 was amended by Statutes 2004, chapter 211 (SB 1096) to delete a requirement of the prior law. And section 97.75 provides that counties may not charge fees or other levies against cities for the costs of administering the VLF Swap and the Triple Flip during the 2004-2005 and 2005-2006 fiscal years, but may charge a fee against cities for the actual costs of administering these programs beginning in 2006-2007.	allocations in 2004-2005 or 2005-2006, but is required to perform those calculations in 2006-2007 and after. However, section 97.75 provides for counties to charge cities, beginning in the 2006-2007 fiscal year, for the costs of administering the VLF Swap. Section 97.75 provides for fee authority sufficient to cover the costs of the mandated activities to implement the VLF Swap for all counties, ***except*** the City and County of San Francisco. As explained in the proposed statement of decision, the City and County of San Francisco does not have the benefit of a subordinate local government entity against which to charge the costs of administering the program. Costs for this program are expended from the City and County's local proceeds of taxes, which under the Constitution requires reimbursement pursuant to article XIII B, section 6. Thus, for all counties except the City and County of San Francisco, there are no increased costs mandated by the state, beginning in fiscal year 2006-2007. Therefore, reimbursement is required for the 2004-2005 and 2005-2006 fiscal years for all counties, and beginning in 2006-2007, only for the City and County of San Francisco.
Triple Flip - Revenue and Taxation Code section 97.68 and 97.75, as added or amended by	Section 97.68 requires each county to establish a Sales and Use Tax Compensation Fund (SUTCF), and requires a county	*Partially approve* –The adjustments and reductions required by section 97.68 mandate a new program or

Statutes of 2003, Chapter 162 Statutes of 2004, Chapter 211 (SB 1096).	auditor to reduce, by the countywide adjustment amount provided by DOF, the amount otherwise required to be allocated to a county's ERAF, and deposit that amount in the SUTCF. Section 97.68 then requires a county auditor to allocate revenues in the SUTCF among the county and the cities in the county pursuant to the portions of the countywide adjustment amount identified by the Department of Finance for each city and for the county, allocating one half of the amount identified for each city and for the county in each January during the fiscal adjustment period, and one half the amount identified for each city and for the county in each May. Section 97.68 requires a county auditor to adjust the amount of ad valorem property tax revenue reduced from a city or the county and deposited in the SUTCF, based on the amount recalculated by DOF at the end of each year. Section 97.68 provides for a different allocation method in the year that the triple flip ends, depending on which quarter of the fiscal year the suspension of the one-quarter percent sales and use tax authority is ended. Section 97.75 provides that a county shall not impose a fee, charge, or other levy on a city, nor reduce a city's allocation of property tax revenue, in reimbursement for the services performed by the county under sections 97.68 and 97.70 for the 2004-2005 and 2005-2006 fiscal	higher level of service on counties. The section does not require a county auditor to perform the calculations to determine the amounts of reductions or allocations. However, section 97.75 provides fee authority sufficient to cover the costs of the mandated activities that implement the Triple Flip for all counties, beginning in fiscal year 2006-2007, ***except*** the City and County of San Francisco. The City and County of San Francisco does not have the benefit of a subordinate local government entity against which to charge the costs of administering the programs. Thus, for all counties except the City and County of San Francisco, there are no increased costs mandated by the state, beginning in fiscal year 2006-2007. Therefore, reimbursement is required for the 2004-2005 and 2005-2006 fiscal years for all counties, and beginning in 2006-2007, only for the City and County of San Francisco.

	years, but may impose a fee or other charge for the 2006-2007 fiscal year and after.	

Analysis

The claimant does not seek reimbursement of the funds redirected from county coffers to the ERAF, or the VLF revenues replaced with ERAF funds, or the sales and use tax revenues redirected to repay the economic recovery bonds, and replaced with ERAF funds. The claimant seeks reimbursement for the administrative costs incurred by counties to shift and reallocate funds as directed for the three programs: the ERAF III shift, the VLF Swap, and the Triple Flip.

The ERAF III shift requires a county auditor, in fiscal years 2004-2005 and 2005-2006 only, to reduce the total revenue otherwise required to be allocated to cities, counties, and city and county, by an amount identified by the Controller pursuant to the statute, and deposit those amounts in the county's ERAF account. The ERAF III shift also requires a county auditor to reduce the total ad valorem property taxes otherwise allocated to a special district, by an amount identified by the Controller pursuant to the statute, and deposit those amounts in the county's ERAF account. And, the ERAF III shift requires redevelopment agencies to remit to the county auditor an amount identified by the Director of Finance pursuant to the statute, and if the redevelopment agency does not remit the amount identified, or is unable to do so, the statute requires the county auditor to reduce the allocations of the city or county associated with the redevelopment agency in order to make the required deposit in the ERAF.

The VLF Swap requires a county auditor, beginning in the 2004-2005 fiscal year, to call upon the ERAF funds to allocate funds to cities and counties. The county auditor is required to reduce the amount allocated to the county's ERAF by the "countywide vehicle license fee adjustment amount," and deposit that amount in the VLF Property Tax Compensation Fund, which the county must establish in its treasury. If ERAF funds are not sufficient to procure the full amount required, the county auditor must reduce allocations to school districts and community college districts, in proportion to their share of total ad valorem property tax revenue. The county auditor is then required to allocate the moneys in the VLF Property Tax Compensation Fund in accordance with the statute. For the 2004-2005 and 2005-2006 fiscal years, the Controller is required to identify for the county auditor the vehicle license fee adjustment amounts. Beginning in 2006-2007, the county auditor must determine the adjustment amounts.

The Triple Flip requires a county auditor to call upon ERAF funds as well, beginning in the 2004-2005 fiscal year and continuing until the Director of Finance determines that the economic recovery bonds issued under Proposition 57 have been repaid, and the suspension of the Bradley-Burns sales and use tax authority is lifted. The auditor is required to reduce, in each applicable fiscal year, in an amount identified by the Director of Finance, the total amount of ad valorem property tax revenue otherwise required to be allocated to a county's ERAF, and deposit those funds in a Sales and Use Tax Compensation Fund, which the county is required to establish in its treasury. The auditor is then required to allocate the moneys in the SUTCF to the cities and the county, in amounts identified by the Director of Finance, in order to compensate for the sales and use tax revenues redirected to service the bonds. In the year in which the recovery bonds are repaid, the countywide adjustment amount will be prorated and reallocated as between the ERAF and the local taxing entities, in accordance with the statute.

Staff finds that the creation of new accounts in the treasury of each county, the reduction and reallocation of funds, as specified, and the calculation, beginning in fiscal year 2006-2007, of the VLF adjustment amounts are new, with respect to prior law, and are mandated, based on the plain language of the test claim statutes. Therefore staff finds that the test claim statutes impose a state-mandated new program, within the meaning of article XIII B, section 6.

Where a new program or higher level of service is mandated, reimbursement is required only if the local government incurs increased costs. Section 17514 of the Government Code provides that "costs mandated by the state" means any increased costs that a local agency or school district is required to incur as a result of a statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program. Section 17556 provides a number of statutory exclusions from the definition of "costs mandated by the state." The Commission is proscribed from finding costs mandated by the state if the test claim statute or executive order implements a voter-enacted ballot measure; or provides the authority to impose service charges or fees sufficient to cover the costs of the mandated new program or higher level of service.

Proposition 57 created the economic recovery bonds, which the Triple Flip is designed to repay over time. It does not necessarily follow, however that the Triple Flip imposes duties "necessary to implement" Proposition 57, as would trigger a bar to reimbursement under section 17556(f). There are any number of methods or means by which the bonds could be repaid, and the Triple Flip is the Legislature's choice. As discussed below, the "necessary to implement" test of section 17556(f) is interpreted very narrowly by the courts, and in this context would only operate to bar reimbursement if the Triple Flip were an essential, or the only, path to repay the bonds authorized by the voters.

Section 97.75, as added by Statutes 2004, chapter 211 (SB 1096), *prohibits* counties from imposing a fee or charge upon the cities to pay the administrative costs of the VLF Swap and the Triple Flip during the 2004-2005 and 2005-2006 fiscal years. However, section 97.75 also provides that counties may impose a fee or charge cities beginning in the 2006-2007 fiscal year not to exceed the actual costs of the administration of the VLF Swap and the Triple Flip.[2] Except as provided in the next paragraph, that authority to impose a fee or charge is sufficient to fully offset the administrative costs of the two programs, and triggers the bar to reimbursement found in section 17556(d), beginning in fiscal year 2006-2007. Those administrative costs are the extent of the mandated activities for the VLF Swap and the Triple Flip, and therefore reimbursement must end, pursuant to Government Code section 17556(d), when the fee authority becomes available, beginning in fiscal year 2006-2007, for those activities.

However, the City and County of San Francisco (a local government in which the city and county governments have been consolidated into one entity) cannot logically or legally avail itself of the fee authority provided, because there is no subordinate local entity upon which to impose the service charges provided for in the statute.[3] The City and County is nevertheless

[2] The ERAF III shift, by the terms of the statute, is limited to the 2004-2005 and 2005-2006 fiscal years.

[3] See Government Code section 23138 [describing the "boundaries of San Francisco city and county" as a single body.] See also, San Francisco Administrative Code section 2.1-1

required to perform the same activities, and incur the same costs, as all other counties. Their costs, however, are expended from their own local proceeds of taxes, which under the Constitution, requires reimbursement pursuant to article XIII B, section 6. Because the City and County of San Francisco cannot, as a matter of law, offset its costs with fee authority within the meaning of section 17556(d), the City and County continues to experience increased costs mandated by the state during and after the 2006-2007 fiscal year, and reimbursement is not barred by the operation of Revenue and Taxation Code section 97.75.

Conclusion

Accordingly, staff concludes that Revenue and Taxation Code sections 97.71, 97.72, 97.73, 97.70, and 97.68, and Health and Safety Code sections 33681.12, 33681.13, 33681.14, and 33681.15 (as added or amended by Statutes 2003, chapter 162; Statutes of 2004, chapter 211 (SB 1096); and Statutes of 2004, chapter 610 (AB 2115)) impose a reimbursable state-mandated program on counties within the meaning of article XIII B, section 6 of the California Constitution for the activities listed on pages 55 to 64 of the proposed statement of decision.

All other test claim statutes pled in this claim do not impose a reimbursable state-mandated program and are therefore recommended for denial.

Staff Recommendation

Therefore, staff recommends that the Commission adopt the proposed statement of decision to partially approve this test claim.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

[describing the Board of Supervisors of the City and County of San Francisco as having all powers not reserved to the people or delegated to other boards or commissions by the charter.] (Ordinance 65-13, File No. 130018, approved April 17, 2013, effective May 17, 2013.)

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Health & Safety Code Sections 33681.12, 33681.13, 33681.14, and 33681.15; Revenue & Taxation Code Sections 96.81, 97.75, 97.76, 97.77, 97.31, 98.02, 97.68, 97.70, 97.71, 97.72, 97.73 Statutes of 2003, Chapter 162; Statutes of 2004, Chapter 211; Statutes of 2004, Chapter 610 Filed on August 12, 2005 By County of Los Angeles, Claimant.	Case No.: 05-TC-01 *Accounting for Local Revenue Realignment* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted September 27, 2013*)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on September 27, 2013. [Witness list will be included in the final statement of decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission [adopted/modified] the proposed statement of decision to [approve/deny] the test claim at the hearing by a vote of [vote count will be included in the final statement of decision].

Summary of the Findings

The Commission finds that the three revenue realignment programs created by the test claim statutes impose reimbursable activities upon counties to establish new accounts within the treasury of the county, and to reduce and reallocate funds as directed by the statutes, and in amounts identified by the Department of Finance or the Controller, respectively. The Commission finds that the test claim statutes do not, by the plain language, require counties to calculate, or to verify, the amounts required to be reduced during the 2004-2005 and 2005-2006 fiscal years, but that the VLF Swap does require counties to calculate the adjustment amount beginning in the 2006-2007 fiscal year. The Commission finds that none of the statutory exclusions from reimbursement found in section 17556 are applicable to these activities in the 2004-2005 and 2005-2006 fiscal years, but beginning in 2006-2007, all counties, except for the City and County of San Francisco, are authorized by section 97.75 to charge cities within their jurisdiction fees in an amount sufficient to pay for the administrative costs of the VLF Swap and

the Triple Flip required by sections 97.70 and 97.68 of the Revenue and Taxation Code. Therefore, reimbursement for the VLF Swap and Triple Flip must end in the 2006-2007 fiscal year for all counties, except the City and County of San Francisco, because they no longer incur increased costs mandated by the state, by virtue of their authority to charge the incurred costs to cities. However, because the City and County of San Francisco is not relieved of any incurred costs by the operation of the fee authority provided, the City and County continues to be eligible for reimbursement during and after the 2006-2007 fiscal year for the VLF Swap and the Triple Flip.

COMMISSION FINDINGS

I. Chronology

08/12/2005	Claimant, County of Los Angeles, filed the test claim with the Commission on State Mandates (Commission).
06/09/2008	Claimant submitted supplemental information regarding fee authority offsets.
05/30/2013	Commission staff issued draft staff analysis and proposed statement of decision.
06/06/2013	Claimant requested an extension of time to file comments and postponement of the hearing, which was granted.
07/10/2013	Department of Finance submitted comments on draft staff analysis.
07/19/2013	Claimant submitted comments on draft staff analysis.

II. Introduction

This test claim alleges reimbursable state-mandated increased costs on the basis of three statutes, which added or amended sections of the Government Code, the Health and Safety Code, and the Revenue and Taxation Code. Only the Health and Safety Code and Revenue and Taxation Code provisions have been pled. The test claim statutes shifted and swapped revenue in three areas: the Educational Revenue Augmentation Fund (ERAF) established by each county; making the Vehicle License Fund (VLF) Swap permanent; and the "triple flip" of sales and use taxes to service debt payments on State Economic Recovery Bonds, "back-filled" from the ERAF, which was in turn replaced by direct subventions from the General Fund. The end result was a savings to the state of $1.3 billion.[4]

The Role of Property Taxes

Historically, local governments, including school districts, were funded largely by property taxes: the California Supreme Court in *Serrano v. Priest* observed that "by far the major source of school revenue is the local real property tax."[5] But because not every locality is graced with similar property values (i.e., the tax *base*), or a similar degree of ability and willingness to endure increased *rates* on property within the locality, "this funding scheme invidiously discriminates

[4] Exhibit B, Test Claim Volume II, at p. 165 [Committee Analysis of AB 2115].

[5] *Serrano v. Priest* (*Serrano I*) (1971) 5 Cal.3d 584, at p. 592.

against the poor because it makes the quality of a child's education a function of the wealth of his parents and neighbors."[6] Therefore the longstanding reliance on property taxes for school district funding, and the resulting inequality, gave rise to corrective legislative action, in the form of SB 90 (Stats. 1972, ch. 1406), "which established a system of revenue controls that limited the maximum amount of general purpose state and local revenue that a district could receive." A key purpose of SB 90 was to bring higher- and lower-revenue districts closer to the statewide average over time, by applying a differential annual increase in funding to account for inflation (greater increases for lower-revenue districts than for higher-revenue districts). In 1976, the California Supreme Court held in *Serrano v. Priest* (1976) 18 Cal3d 728 (*Serrano II*) that SB 90's corrective efforts had not sufficiently addressed the problem of district wealth disparities leading to disparities in educational quality.[7]

In response to *Serrano II*, the Legislature passed AB 65 (Stats. 1977, ch. 894), which provided for state assistance to poorer districts if their revenues fell below a scheduled amount.[8] But before AB 65 was to take effect, "the voters passed Proposition 13 in 1978, which fundamentally restricted the ability of local governments to raise funds to finance schools through local property tax revenues."[9] Proposition 13, most significantly, limited the tax rates applicable to real property, and limited the rate of increase of the underlying assessed value; it also provided that future changes to state taxes must be passed by two-thirds of the Legislature, and future changes to local taxes must be enacted by two-thirds of the electorate. These changes significantly hampered the ability of local governments to raise revenue when necessary, and gave rise to a number of further changes to assist the local governments in providing services, while protecting revenues, including article XIII B, section 6, enacted as Proposition 4 (1980).[10]

The ERAF Shifts

School and local government funding remained stable enough, with help from the state, until the state "faced an unprecedented budgetary crisis at the outset of fiscal year 1991-1992, with expenditures projected to exceed revenues by more than $14 billion."[11] The Legislature answered this crisis by directing counties to create an ERAF, into which county auditors were directed to pour a percentage of property tax revenues previously allocated to cities, counties, redevelopment agencies, and special districts. The property tax revenues in the ERAF were then to be distributed to schools and community colleges, reducing the state's share of Proposition 98 minimum guarantee funding beginning in fiscal year 1992-1993.[12] A second ERAF shift was

[6] *Id*, at p. 589.

[7] *Serrano v. Priest* (*Serrano II*) (1976) 18 Cal.3d 728.

[8] *County of Sonoma v. Commission on State Mandates* (*Sonoma*) (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1264, at p. 1272.

[9] *Id*, at p. 1273.

[10] *Id*, at pp. 1273-1274.

[11] *Sonoma*, *supra*, at p. 1274.

[12] Exhibit X, LAO Report, Insufficient ERAF, at p. 4.

ordered in 1993,[13] and concurrently "the state cushioned the loss of revenue to local governments through a variety of mitigation measures, including an additional sales tax…trial court funding reform, supplemental funding for special police protection districts, grants of authority to counties to reduce general assistance levels, loans for property tax administration and a one-time mitigation of $292 million."[14]

The redirecting of property taxes into the ERAF was upheld against constitutional challenge, with the court of appeal noting that the "entire law-making authority of the state, except the people's right of initiative and referendum, is vested in the Legislature, and that body may exercise any and all legislative powers which are not expressly, or by necessary implication denied to it by the Constitution." The court held that the principle "is of particular importance in the field of taxation," and that "the Legislature's authority to impose taxes and regulate the collection thereof exists unless it has been *expressly* eliminated by the Constitution."[15] The court noted "a historical fluidity in the fiscal relationship between local governments and schools," and found nothing in the Constitution to restrict the Legislature's ability to engage in "comprehensive legislative planning for the funding of both entities from a variety of sources, including property tax revenue."[16]

In addition to being upheld against constitutional challenge, the amount shifted by the ERAF legislation, and thus suffered by local government, was also held not reimbursable under article XIII B, section 6.[17] Forty-eight counties, including the County of Sonoma, which would become the plaintiff in the superior court action, brought a test claim before the Commission seeking reimbursement for the revenue lost by the ERAF shift. The claimants contended that article XIII B, section 6 required the state to reimburse the local governments for the portion of their property tax revenues that had been taken and shifted to schools through the creation and funding of the ERAFs in each county, pursuant to Statutes 1992, chapters 699 and 700 (SB 844). The Commission denied the claim, concluding that "although the test claim reduced county revenues, it did not impose a spending program."[18] The trial court disagreed, but the court of appeal for the first district upheld the Commission's decision, finding that *actual increased costs* must be demonstrated, not merely *decreases in revenue*.[19] The court distinguished the case from *Lucia Mar*, and *County of San Diego*, on the ground that in both of those cases the state had previously been solely responsible for the costs of the program in question, while school funding, the

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[13] *City of El Monte v. Commission on State Mandates* (Cal. Ct. App. 3d Dist. 2000) 83 Cal.App.4th 266, at p. 274.

[14] *Sonoma*, *supra*, at p. 1276.

[15] *County of Los Angeles v. Sasaki* (Cal. Ct. App. 2d. Dist. 1994) 23 Cal.App.4th 1442, at pp. 1453-1454 [internal citations omitted]. See also *San Miguel Consolidated Fire Protection District v. Davis* (Cal. Ct. App. 3d Dist. 1994) 25 Cal.App.4th 134 [article XIII A, section 1, does not limit the ability of the Legislature to apportion property tax revenues].

[16] *Sasaki*, *supra*, at p. 1457.

[17] *Sonoma*, *supra*, at pp. 1277-1289.

[18] *Sonoma*, *supra*, at p. 1277.

[19] *Id*, at p. 1285.

subject of the *Sonoma* action, had been a shared endeavor of the state and local governments, "subject to changing allocations of responsibility."[20]

In accord is *City of El Monte, supra,* in which ERAF losses incurred by redevelopment agencies were held not reimbursable, either to the city itself, or to the agency. In that case the court relied in part on *City of San Jose*,[21] finding that "the shift of a portion of redevelopment agency funds to local schools did not create a reimbursable state mandate," because the shift was from one local entity to another. The court also held, alternatively, that because the shifted funds were permitted, pursuant to the statute, to be paid from *any legally available source,* including tax increment financing, the legislation did not impose costs that could be recovered solely from *proceeds of taxes,* within the meaning of article XIII B, section 6. Tax increment financing, specifically, "the most important method of financing employed by a redevelopment agency,"[22] had already been established as a funding source other than "proceeds of taxes."[23] Accordingly, "under the reasoning of *County of Fresno v. State of California*, 53 Cal.3d at pp. 486-487, the ERAF legislation did not impose a reimbursable state mandate."

However, the administrative activities conducted under the prior ERAF statutes, and the costs incurred by counties to shift and transfer funds, *were found to be reimbursable,* in a separate test claim. In its statement of decision on *Allocation of Property Tax Revenues* (CSM-4448), the Commission found that "the provisions of Revenue and Taxation Code sections 97, 99.01, 97.02, 97.03, 97.035, 97.5, 98, and 99, as added or amended as specified herein, do impose a new program or higher level of service…by requiring counties to redesign the terms, conditions, rules, and formulas for reallocating California's local property tax revenues." In that test claim, the Commission found reimbursable only "that portion of the new and additional accounting procedures that apply to school districts because counties are specifically forbidden from charging school districts for the administrative costs of allocating property taxes as specified and from recovering any lost school administrative fees by charging other types of jurisdictions."[24]

The current ERAF shift is limited to the 2004-2005 and 2005-2006 fiscal years, and impacts cities, counties, redevelopment agencies, special districts, and joint county special districts, requiring these entities to transfer a portion of revenues otherwise received to the ERAF. This shift relieves, temporarily, the state's burden in meeting its obligation to fund education at a minimum level. However, as discussed below, the ERAF moneys are also called upon to replace the VLF backfill payments and the sales and use tax revenue losses due to dedicating those funds to the repayment of economic recovery bonds authorized in Proposition 57.

The VLF Swap

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[20] *Id,* at p. 1287 [distinguishing from *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830; *County of San Diego v. State of California* (1997) 15 Cal.4th 68].

[21] (1996) 45 Cal.App.4th 1802.

[22] *City of El Monte, supra,* 83 Cal.App.4th at p. 269.

[23] See *Brown v. Community Redevelopment Agency* (1985) 168 Cal.App.3d 1014; *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24.

[24] Test Claim Statement of Decision, *Allocation of Property Tax Revenues,* dated October 18, 1994 (CSM-4448), at pp. 18-19.

The Vehicle License Fee (VLF) has been, since its inception in 1935, primarily and traditionally a local government revenue resource.[25] The fee is based on the purchase price of the vehicle, and indexed to decline as the vehicle depreciates. Beginning in the late 1990's the Legislature reduced the VLF rates, formerly set at two percent of the price of the vehicle, depreciating year over year; and "back-filled" the lost revenue to counties and cities from General Fund allocations.[26] A trigger provision was included to *increase* the VLF when General Fund revenues were determined to be insufficient to backfill the losses, which then-Governor Davis instituted in 2003, shortly before losing office in the November 2003 recall election. After assuming office, then-Governor Schwarzenegger reversed the determination of insufficiency, and reinstated the back-fill payments and the lower VLF rates. Then in 2004, a new mechanism for reimbursing the reduced VLF revenue to local governments was developed, which was meant to provide "an element of increased security," but also to save the state a substantial amount of money:

> Specifically, the VLF Swap replaced the General Fund VLF backfill with property taxes redirected at the county level from (1) ERAF and, if ERAF revenues are not sufficient, from (2) nonbasic aid K-12 and community college districts. (All reductions in revenue to K-12 and community college districts are offset by additional state aid.)[27]

The VLF Swap also provided that future growth in reimbursements would follow growth in property values within the community, by tying the annual calculation of the adjustment amount to the percentage change in gross taxable assessed valuation in the jurisdiction.

Triple Flip

The test claim statute, Statutes 2003, chapter 162 (AB 1766), created the Triple Flip as a means to provide a steady and dedicated funding stream to repay deficit financing bonds approved by the Legislature in Statutes 2003-2004, 1st Extraordinary Session, chapter 13 (AB 1X7).[28,29] The legislatively-authorized bonds were challenged in the courts, and never issued.[30] Then in December 2003, the Legislature repealed and reenacted the Triple Flip,[31] in a bill made

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[25] Exhibit X, LAO Report: Insufficient ERAF, at p. 5.

[26] Exhibit X, LAO Report: Insufficient ERAF, at p. 5. See Also Statutes 1998, chapter 322 (AB 2797.

[27] *Id*, at p. 6.

[28] Statutes 2003-2004, 1st Extraordinary Session, chapter 13 (AB 1X7) was not pled in this test claim, but does not appear to impose any activities or tasks upon local government.

[29] Both Statutes 2003, chapter 162 (AB 1766) and Statutes 2003-2004, 1st Extraordinary Session, chapter 13 (AB 1X7) were enacted on August 2, 2003.

[30] Exhibit X, Voter Information Guide, Supplemental, March 2, 2004, at p. 7.

[31] The repeal and reenactment of the Triple Flip had no effect on the underlying law with respect to mandates. See California Jurisprudence, 3d, Statutes, section 78 ["[I]f a new statute repeals an existing statute and they both legislate upon the same subject, and in many cases, the provisions of the two statutes are similar, and almost identical, and there never has been a moment of time

contingent upon voter approval of economic recovery bonds, to be placed on the March 2, 2004 ballot.[32]

Then, in 2004, the voters approved Proposition 57, which created "a deficit-financing bond to address the state's budget shortfall." The LAO describes the triple flip as follows:

- Beginning in 2004-05, one-quarter cent of the local sales tax is used to repay the deficit-financing bond.
- During the time these bonds are outstanding, city and county revenue losses from the diverted local sales tax are replaced on a dollar-for-dollar basis with property taxes shifted from ERAF.
- K-12 and community college district tax losses from the redirection of ERAF to cities and counties, in turn, are offset by increased state aid.

The LAO projects that triple flip will end (i.e., the bonds will be repaid) by 2016-2017, and "the $1.7 billion in ERAF monies that otherwise would have been used to fund the triple flip will be available for other uses—namely funding the VLF Swap and offsetting state K-14 expenditures."[33]

III. Positions of the Parties

Claimant's Position

The claimant seeks reimbursement for the "close and daily collaboration of State and local revenue management officials" necessary to implement the "innovative revenue systems" that the state put in place in the test claim statutes.

The claimant alleges that the state saved $1.3 billion in 2004-2005 and 2005-2006 by shifting and redirecting funds from the three sources, as discussed above. The claimant states:

> Of course, reimbursement for the $1.3 billion the State saved in reducing local governments' property tax revenues is not sought here. What is sought here is reimbursement for the increased costs which the County of Los Angeles and other counties throughout the State have incurred during 2004-05 [$13,301,018] and

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since the passage of the existing statute when these similar provisions have not been in force, the new act should be construed as a continuation of the old with the modification contained in the new act."] See also *In re Dapper*, 71 Cal.2d 184, at p. 189, citing *Sobey v. Molony*, 40 Cal.App.2d, 381, at p. 385 ["When a statute, although new in form, re-enacts an older statute without substantial change, even though it repeals the older statute, the new statute is but a continuation of the old. There is no break in the continuous operation of the old statute, and no abatement of any of the legal consequences of acts done under the old statute."]

[32] Statutes 2003-2004, 5th Extraordinary Session, chapter 2 (AB 5X9) was also not pled in this test claim, but added to section 97.68 only subdivision (g), the text of which had been in the uncodified section of Statutes 2003, chapter 162, and which does not impose any activities or tasks upon local government.

[33] Exhibit X, LAO Report: Insufficient ERAF, at pp. 4-5.

> will incur during 2005-06 [$12,580,829] as an unavoidable consequence of complying with this test claim legislation.
>
> The costs claimed herein meet the requirements for reimbursable costs under Section 6 of Article XIIIB of the California Constitution. First, increased costs were incurred after July 1, 1980. Secondly, such costs were incurred as a result of statutes enacted on or after January 1, 1975. And, third, increased costs were incurred to implement a new program or a higher level of service of an existing program.[34]

The claimant also asserts that sections 17556(d), 17556(e), and 17556(f) do not apply to bar reimbursement. The claimant asserts that section 17556(d) is not applicable because charging fees or levies against cities is expressly prohibited by the test claim statutes (albeit only for the 2004-2005 and 2005-2006 fiscal years), and that therefore "the County has no authority to levy services charges, fees, or other assessments under the test claim legislation or under other authority."[35] The claimant asserts that section 17556(e) does not bar reimbursement because "[n]o offsetting savings to local agencies or school districts were provided," and because "no revenue that was specifically intended to fund the costs of the State mandates claimed herein was provided." Finally, the claimant asserts that section 17556(f) is not applicable to bar reimbursement because, in the claimant's view, the test claim statutes are not necessary to implement or reasonably within the scope of any voter-enacted ballot initiatives. The claimant cites Propositions 57 (March 2004), 1A, and 65 (November 2004), but argues that none implicate section 17556(f).[36]

The claimant alleges also that it determined the costs of the test claim statutes, with the participation of twenty-four counties:

> In order to develop and implement a compliant ancillary tax revenue allocation system, counties performed planning, implementation, State reporting, distribution and administrative duties not required under prior law. The costs of performing these duties were studied by twenty-four· counties and are reported herein under the Cost Study section.

The claimant asserts that the planning activities include interpretation of the test claim statutes, and meeting and conferring with state officials to develop guidelines and a model for the shifts. The implementation activities alleged include establishing new accounts for the reallocated funds, reviewing the reduction amounts received from DOF, and "[i]nclusion of the ERAF III shift in the calculation of the County Property Tax Administrative Cost (SB2557)." The claimant also asserts that "[t]he County prepares voluminous, periodic, special State reports, required by the State Controller's Office to monitor compliance with the subject laws." Finally, the claimant also asserts that "County Auditor-Controller personnel were called upon to explain the new property tax revenue allocations under the subject laws," and that "considerable staff

[34] Exhibit A, Test Claim, at p. 11.

[35] Exhibit A, Test Claim, at p. 124.

[36] Exhibit A, Test Claim, at p. 126.

time was involved in answering questions from the County's local taxing jurisdictions regarding their specific allocation(s)."[37]

The claimant therefore has submitted a cost study, based on a survey of county staff, and including legislation analysis and other planning activities, as well as reviewing the amounts given by DOF, and other implementation activities, and administering the shifts.[38]

The claimant submitted comments on the draft staff analysis on July 19, 2013, concurring with the draft staff analysis, and the conclusion that the test claim legislation imposes reimbursable mandated activities on counties.[39]

State Agencies' Position(s)

The Department of Finance submitted comments on the draft staff analysis on July 10, 2013, in which DOF concurred with staff's conclusion that the test claim statutes impose a partially reimbursable state-mandated program.[40]

IV. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

> Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service, except that the Legislature *may, but need not*, provide a subvention of funds for the following mandates:
>
> (1) Legislative mandates requested by the local agency affected.
>
> (2) Legislation defining a new crime or changing an existing definition of a crime.
>
> (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

The purpose of article XIII B, section 6 is to "preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[41] Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] …"[42]

Reimbursement under article XIII B, section 6 is required when the following elements are met:

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[37] Exhibit A, Test Claim, at pp. 90-98.

[38] Exhibit A, Test Claim, at p. 98 and following.

[39] Exhibit I, Claimant Comments on Draft Staff Analysis.

[40] Exhibit H, DOF Comments on Draft Staff Analysis.

[41] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[42] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.[43]
2. The mandated activity either:
    a. Carries out the governmental function of providing a service to the public; or
    b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.[44]
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.[45]
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.[46]

The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[47] The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[48] In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[49]

A. Some of the test claim statutes impose a mandated new program or higher level of service upon counties.

As noted above, the claimant seeks reimbursement for, in the words of the LAO, "the complex process county auditors follow to allocate ERAF and to reimburse cities and counties for the triple flip and VLF Swap."[50] The following analysis will demonstrate that the operations required by the test claim statutes are indeed "complex," and that the claimant has alleged increased costs as a result of these accounting processes not previously required. The

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[43] *San Diego Unified School Dist. v. Commission on State Mandates* (*San Diego Unified School Dist*.) (2004) 33 Cal.4th 859, 874.

[44] *Id*. at 874-875 (reaffirming the test set out in *County of Los Angeles*, *supra*, 43 Cal.3d 46, 56.)

[45] *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

[46] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

[47] *County of San Diego*, *supra*, 15 Cal.4th 68, 109.

[48] *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

[49] *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280 [citing *City of San Jose*, *supra*].

[50] Exhibit X, LAO Report: Insufficient ERAF, at p. 7.

Commission therefore finds that the test claim statutes impose a state-mandated new program or higher level of service upon counties.

1. Property Taxes/ERAF III Shift

Revenue and Taxation Code sections 97.71, 97.72, and 97.73, as added by Statutes 2004, chapter 211 (SB 1096), and amended by Statutes 2004, chapter 610 (AB 2115), provide for shifting funds from cities, counties, cities and counties, and special districts, to a county's ERAF, for the 2004-2005 and 2005-2006 fiscal years. Likewise, Health and Safety Code sections 33681.12, added by Statutes 2004, chapter 211 (SB 1096); 33681.13 and 33681.14, added by Statutes 2004, chapter 211 (SB 1096) and amended by Statutes 2004 chapter 610 (AB 2115); and 33681.15, added by Statutes 2004, chapter 610 (AB 2115), provide for shifting funds from redevelopment agencies to a county's ERAF for the 2004-2005 and 2005-2006 fiscal years. The claimant alleges that these sections impose state-mandated requirements upon counties to reduce, as directed by the statutes, and in amounts identified by the Controller, revenues otherwise allocated to local entities, including cities, counties, special districts, and redevelopment agencies, and to deposit those moneys in the ERAF.

The claimant also alleges reimbursable activities under sections 97.31, as amended by Statutes 2004, chapter 211 (SB 1096); 97.77, as added by Statutes 2004, chapter 211 (SB 1096); and 98.02, as amended by Statutes 2004, chapter 211 (SB 1096), as discussed below.[51]

a. Revenue and Taxation Code section 97.71 (added by Stats. 2004, ch. 211 (SB 1096); amended by Stats. 2004, ch. 610 (AB 2115)).

Section 97.71 defines the method of calculating the ERAF III shift amount for each city, county, and city and county. The claimant concedes that "[t]he State Controller is responsible for making these calculations and notifies each County Auditor-Controller of the amounts to shift."[52] Therefore, from the outset it is clear that only the reduction and transfer of funds, and *not the calculation of the amounts* to reduce and transfer, constitute the mandated activities required by the plain language of the statute.

Section 97.71(a) provides dollar-amount reductions for each county, from the total revenue required to be allocated under section 97.70, to take place in the 2004-2005 and 2005-2006 fiscal years only.[53] For a city and county (i.e., the city and county of San Francisco), paragraph (b)(1) provides for an additional reduction of total revenue allocated under section 97.70 based on the fraction created by the amount of money *allocated to the city and county* from the Motor Vehicle License Fee Account for the 2002-2003 fiscal year, divided by the amount of money *allocated among all cities and cities and counties* from the Motor Vehicle License Fee Account for the 2002-2003 fiscal year (which yields a fraction representing the city and county of San Francisco's portion of total statewide revenues from the Motor Vehicle License Fee Account); multiplied by the intended total reduction for all counties and cities and counties of $350 million.

[51] Exhibit A, Test Claim, at pp. 73-82.

[52] Exhibit A, Test Claim, at p. 54.

[53] Revenue and Taxation Code section 97.71(a) (Stats. 2004, ch. 211 (AB 1096); Stats. 2004, ch. 610 (AB 2115)).

For all other cities, the reduction in total revenue is allocated among the cities based on each city's share of Motor Vehicle License Fee revenues, sales and use tax revenues, and ad valorem property tax revenues, compared to those three revenue sources for all cities. The calculation required is as follows:

The first reduction factor is the revenue received by *each* city under the Transportation Tax Fund for 2002-2003, divided by the revenue received by *all* cities from the Transportation Tax Fund for 2002-2003, multiplied by thirty three and one-third percent, multiplied by $350 million less the amount determined for the city and county of San Francisco in paragraph (b)(1).

The second reduction factor is the revenue received by contract with the State Board of Equalization from sales and use taxes by *each* city, divided by the revenue received from sales and use taxes by *all* cities, multiplied by thirty three and one-third percent, multiplied by $350 million less the amount determined for the city and county in paragraph (b)(1).

The third reduction factor is the revenue received from ad valorem property taxes by *each* city, divided by the ad valorem property taxes received by *all* cities, multiplied by multiplied by thirty three and one-third percent, multiplied by $350 million less the amount determined for the city and county in paragraph (b)(1).[54]

The total reduction calculated for any city "shall not be less than 2 percent, nor more than 4 percent, of the general revenues of the city, as reported in the 2001-02 edition of the State Controller's Cities Annual Report." If the amount determined exceeds 4 percent of a city's general revenues, the amount of the excess shall be allocated to other cities in proportionate shares.[55]

The section provides that a city may, in lieu of reduction of revenues, "transmit to the county auditor for deposit in the county Educational Revenue Augmentation Fund an amount equal to that reduction."[56]

These calculations are, in the words of the LAO, "complex." And the operations required are alleged to result in substantial time and expense being incurred by county auditors, as discussed below. However, as noted in the test claim, the "State Controller is responsible for making these calculations and notifies each County Auditor-Controller of the amounts to shift."[57] Performing the necessary calculations is therefore not a mandated activity; only reducing the revenues as directed is mandated.

Once the reductions are made, as directed, the section requires that the amount of revenue "that is not allocated to a county, city and county, or a city as a result of subdivisions (a) and (b), and

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[54] Revenue and Taxation Code section 97.71(b)(2) (Stats. 2004, ch. 211 (AB 1096); Stats. 2004, ch. 610 (AB 2115)).

[55] Revenue and Taxation Code section 97.71(b)(4) (Stats. 2004, ch. 211 (AB 1096); Stats. 2004, ch. 610 (AB 2115)).

[56] Revenue and Taxation Code section 97.71(b)(5) (Stats. 2004, ch. 211 (AB 1096); Stats. 2004, ch. 610 (AB 2115)).

[57] Exhibit A, Test Claim Filing, at p. 54. See also Revenue and Taxation Code section 97.71(b)(3) (Stats. 2004, ch. 211 (AB 1096); Stats. 2004, ch. 610 (AB 2115)).

that amount that is received by the county auditor under paragraph (5) of subdivision (b) (an equal amount in lieu of the reduction), shall be deposited in the county Educational Revenue Augmentation Fund and shall be allocated as specified in subdivision (d) of Section 97.3."[58] Section 97.3 is not amended by the test claim statutes, nor pled in this test claim, and therefore the Commission does not here consider whether section 97.3, addressing the allocation of funds, imposes reimbursable state-mandated activities upon the counties.

The activities required of county auditors to reduce revenue as directed and deposit money in the county's ERAF are mandatory, based on the plain language of the statute. The activities are also new, and are required in addition to the ERAF shifts established in the 1990's, as discussed above. The additional, and temporary, ERAF shifts required for fiscal years 2004-2005 and 2005-2006 were not required under prior law. Finally, the activities required fall uniquely upon local government.[59] Therefore the activities to reduce revenue as directed and deposit money in the county's ERAF impose a mandated new program or higher level of service upon counties, within the meaning of article XIII B, section 6.

The Commission finds that section 97.71 as added by Statutes 2004, chapter 211 (SB 1096), and amended by Statutes 2004, chapter 610 (AB 2115), imposes a mandated new program or higher level of service upon the counties to perform the following activities during fiscal years 2004-2005 and 2005-2006 only:

- Reduce revenue otherwise required to be allocated to each county, for the 2004-2005 and 2005-2006 fiscal years only, by the amounts listed in Revenue and Taxation Code section 97.71(a)(1), and deposit that amount in the county's ERAF.[60]
- Reduce revenue otherwise required to be allocated to a city and county, for the 2004-2005 and 2005-2006 fiscal years only, by an amount identified by the Controller pursuant to Revenue and Taxation Code section 97.71 (b)(2-3), and deposit that amount in the county's ERAF.[61]
- Reduce revenue otherwise required to be allocated to each city within the county, for the 2004-2005 and 2005-2006 fiscal years only, by an amount identified by the Controller pursuant to Revenue and Taxation Code section 97.71(b)(2-3), and deposit that amount in the county's ERAF.[62]

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[58] Revenue and Taxation Code section 97.71(c) (Stats. 2004, ch. 211 (AB 1096); Stats. 2004, ch. 610 (AB 2115)).

[59] Revenue and Taxation Code section 97.71(b)(3) (Stats. 2004, ch. 211 (AB 1096); Stats. 2004, ch. 610 (AB 2115)).

[60] Revenue and Taxation Code section 97.71(a)(1); (c) (Stats. 2004, ch. 211 (AB 1096); Stats. 2004, ch. 610 (AB 2115)).

[61] Revenue and Taxation Code section 97.71(b); (c) (Stats. 2004, ch. 211 (AB 1096); Stats. 2004, ch. 610 (AB 2115)).

[62] Revenue and Taxation Code section 97.71(c) (Stats. 2004, ch. 211 (AB 1096); Stats. 2004, ch. 610 (AB 2115)).

- Where applicable, accept from a city, in lieu of reduction of that city's revenues, an amount equal to the required reduction, and deposit those moneys in the county's ERAF.[63]

Reimbursement is not required for calculating the amounts of revenue otherwise required to be allocated to a city, county, or city and county, which must be reduced and deposited in the county ERAF.[64]

b. Revenue and Taxation Code sections 97.72, 97.73, and 97.77 (added by Stats. 2004, ch. 211 (SB 1096); amended by Stats. 2004, ch. 610 (AB 2115))

Sections 97.72 and 97.73, as added by Statutes 2004, chapter 211 (SB 1096), and amended by Statutes 2004, chapter 610 (SB 2115), provide for reductions of ad valorem property tax revenue otherwise required to be allocated to special districts, and require the county to reduce the revenue, as directed, and deposit the reduced amounts in the county's ERAF. Sections 97.72 and 97.73, in the claimant's words, "define the method of calculating the ERAF III shift amount for each special district," but again the claimant notes that the County Auditor-Controller will be notified of the amounts to shift.[65] The claimant alleges that counties have incurred increased costs due to implementation of the ERAF III shift, requiring "the close collaboration of State as well as local officials."[66]

Section 97.72 describes the amount of ad valorem property tax revenue to be shifted from each enterprise special district to the county's ERAF, on the basis of amounts determined by the Controller, and passed along to the county auditor by way of the Director of Finance.[67] For a special district located in more than one county, the county auditor must prorate the total shift amount among the affected counties based on the ad valorem property taxes allocated to the district from *each* county.[68] Section 97.72 provides that the amount of ad valorem property tax revenue "that is not allocated to an enterprise special district as a result of subdivision (a) shall

[63] Revenue and Taxation Code section 97.71(b)(5) (Stats. 2004, ch. 211 (AB 1096); Stats. 2004, ch. 610 (AB 2115)).

[64] Revenue and Taxation Code section 97.71(b)(3) (Stats. 2004, ch. 211 (AB 1096); Stats. 2004, ch. 610 (AB 2115)).

[65] Exhibit A, Test Claim, at p. 58.

[66] Exhibit A, Test Claim, at p. 66.

[67] Revenue and Taxation Code section 97.72(a)(2) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004, ch. 610 (AB 2115)).

[68] Exhibit A, Test Claim Filing, at pp. 58; Revenue and Taxation Code section 97.72 (Stats. 2004, ch. 211 (SB 1096); Stats. 2004, ch. 610 (AB 2115)) Although the section states that for multi-county special districts a county auditor "shall implement that portion of the total reduction," pursuant to paragraph (a)(1), the Controller is still required to determine the amount of revenue reductions required for each special district "required by paragraph (1)," pursuant to paragraph (a)(2).

instead be deposited in the county Educational Revenue Augmentation Fund and shall be allocated as specified in Section 97.3."[69,70]

Section 97.73 describes the amount of ad valorem property tax revenue to be shifted from each nonenterprise special district to the county's ERAF, on the basis of amounts determined by the Controller. If a special district is located in more than one county, the auditor of each county "shall implement that portion of the total reduction, required by subparagraph (A) with respect to that district, determined by the ratio of the amount of ad valorem property tax revenue allocated to that district from the county to the total amount of ad valorem property tax revenue allocated to that district from all counties."[71] And, like section 97.72, the statute provides that the amounts not allocated to a nonenterprise special district "shall instead be deposited in the county Educational Revenue Augmentation Fund and shall be allocated as specified in subdivision (d) of section 97.3."[72, 73]

The activities required of county auditors are mandatory, based on the plain language of the statute. Auditors are required to make the reductions based on the amounts determined by the Controller and conveyed to the auditor, and deposit the reduced amounts in the county's ERAF in each of the 2004-2005 and 2005-2006 fiscal years. The activities are also new; the ERAF program was created in 1992, and amended in 1993, but the additional ERAF shifts required for fiscal years 2004-2005 and 2005-2006 were not required under prior law.[74] Finally, the activities required fall uniquely upon local government.[75] Therefore the activities of reducing the revenue as directed and depositing money in the county's ERAF impose a mandated new program or higher level of service upon counties, within the meaning of article XIII B, section 6.

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[69] Revenue and Taxation Code section 97.72(b) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004, ch. 610 (AB 2115)).

[70] As noted above, Section 97.3 is not amended by the test claim statutes, nor pled in this test claim, and therefore the Commission does not here consider whether section 97.3 imposes reimbursable state-mandated activities upon the counties.

[71] Revenue and Taxation Code section 97.73(a)(1)(C) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004, ch. 610 (AB 2115)). As with section 97.72, above, although the section states that for multi-county special districts a county auditor "shall implement that portion of the total reduction," the Controller is still required to determine the amount of revenue reductions required for each special district "required by paragraph (1)," pursuant to paragraph (a)(2).

[72] Revenue and Taxation Code section 97.73(b) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004, ch. 610 (AB 2115)).

[73] As noted above, Section 97.3 is not amended by the test claim statutes, nor pled in this test claim, and therefore the Commission does not here consider whether section 97.3 imposes reimbursable state-mandated activities upon the counties.

[74] See *City of Alhambra v. County of Los Angeles* (2012) 55 Cal.4th 707, at p. 714 [discussing the "permanent base shifts required by ERAF I and ERAF II"].

[75] Revenue and Taxation Code section 97.72(a)(2); 97.73(a)(2) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004, ch. 610 (AB 2115)).

Section 97.77 provides that special districts, both enterprise and nonenterprise, *shall not pledge*, on or after July 1, 2004, and before June 30, 2006, through a bond covenant to pay debt service costs on debt instruments issued by the district, any ad valorem property tax revenue that would otherwise be dedicated to the reduction required by Sections 97.72 and 97.73. This section is prohibitive, not mandatory, and does not impose any mandated activities upon local government.

Sections 97.72 and 97.73, as added by Statutes 2004, chapter 211 (SB 1096), and amended by Statutes 2004, chapter 610 (AB 2115), impose a mandated new program or higher level of service for each county to perform the following activities during fiscal years 2004-2005 and 2005-2006 only:

- Reduce, during fiscal years 2004-2005 and 2005-2006, the amount of ad valorem property tax otherwise required to be allocated to an enterprise special district, including an enterprise special district located in more than one county, in amounts determined by the Controller and received from the Director of Finance, for each enterprise special district in the county.[76]
- Deposit the amounts reduced in fiscal years 2004-2005 and 2005-2006 from each enterprise special district in the county's ERAF.[77]
- Reduce, during fiscal years 2004-2005 and 2005-2006, the amount of ad valorem property tax otherwise required to be allocated to a nonenterprise special district, including a nonenterprise special district located in more than one county, in amounts determined by the Controller for each special district in each county.[78]
- Deposit the amounts reduced in fiscal years 2004-2005 and 2005-2006 from each nonenterprise special district in the county's ERAF.[79]

Reimbursement is not required for calculating the amounts of ad valorem property tax otherwise required to be allocated to an enterprise or nonenterprise special district which must be reduced and deposited in the county ERAF.[80]

c. Health and Safety Code sections 33681.12, 33681.13, 33681.14, and 33681.15 (as added or amended by Statutes 2004, chapter 211 (SB 1096) and Statutes 2004, chapter 610 (AB 2115))

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[76] Revenue and Taxation Code section 97.72(a)(2) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004, ch. 610 (AB 2115)).

[77] Revenue and Taxation Code section 97.72(b) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004, ch. 610 (AB 2115)).

[78] Revenue and Taxation Code section 97.73(a)(2) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004, ch. 610 (AB 2115)).

[79] Revenue and Taxation Code section 97.73(b) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004, ch. 610 (AB 2115)).

[80] Revenue and Taxation Code sections 97.72(a)(2); 97.73(a)(2) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004, ch. 610 (AB 2115)).

Section 33681.12 provides that a redevelopment agency shall, for the 2004-2005 and 2005-2006 fiscal years, prior to May 10, "remit an amount equal to the amount determined for that agency … to the county auditor for deposit in the county's Educational Revenue Augmentation Fund." The county auditor, in turn, must receive the funds from the redevelopment agency and deposit those funds in the county's ERAF. Paragraph (a)(2) describes how the Director of Finance determines the amount for each agency, and subparagraphs (a)(2)(J) and (K) require the Director to notify each agency and each legislative body, and each county auditor, of the amounts determined.[81] A redevelopment agency may use any funds that are legally available and not obligated for other use in order to make the allocation required. The "legislative body," defined as "the city council, board of supervisors, or other legislative body of the community,"[82] "shall by March 1 report to the county auditor as to how the agency intends to fund the allocation required by this section."[83] The county auditor, in turn, must receive that information from the legislative body, based on the plain language of the statute.

Section 33681.13 provides that a redevelopment agency may allocate less than the amount required under section 33681.12, if necessary to service existing indebtedness. The redevelopment agency must adopt a resolution prior to December 31 of the fiscal year, identifying each existing indebtedness and the amounts owed. A redevelopment agency is required, if constrained by existing indebtedness and thereby unable to remit the amount required under section 33681.12, to enter into an agreement with the legislative body of the county or city where the redevelopment agency is located by February 15 of the applicable fiscal year to fund the payment of the difference between the amount required under section 33681.12 and the amount available for allocation by the agency. If the agency fails to transmit the full amount required by section 33681.12, is precluded by court order from transmitting that amount, or is otherwise unable to meet its full obligation, the county auditor, "by no later than May 15 of the applicable fiscal year, shall transfer any amount necessary to meet the obligation determined for that agency…from the legislative body's allocations pursuant to Chapter 6 (commencing with Section 95)…of the Revenue and Taxation Code."[84]

Section 33681.14 provides that a legislative body may, in lieu of the remittance required by section 33681.12 "prior to May 10 of the applicable fiscal year, remit an amount equal to the amount determined for the agency…to the county auditor for deposit in the county's Educational Revenue Augmentation Fund." If the legislative body reported to the county auditor that it intended to remit the amount on behalf of the redevelopment agency and the legislative body fails to transmit the full amount by May 10, "the county auditor, no later than May 15 of the applicable fiscal year, shall transfer an amount necessary to meet the obligation from the legislative body's allocations pursuant to Chapter 6 (commencing with section 95)…of the Revenue and Taxation Code." If the amount of the legislative body's allocations are not

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[81] Health and Safety Code section 33681.12(a) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004, ch. 610 (AB 2115)).

[82] Health and Safety Code section 33007 (Stats. 1963, ch. 1812).

[83] Health and Safety Code section 33681.12(d) (added by Stats. 2004, ch. 211 (SB 1096); amended by Stats 2004, ch. 610 (AB 2115)).

[84] Health and Safety Code section 33681.13 (added by Stats. 2004, ch. 211 (SB 1096)).

sufficient to meet the obligation under section 33681.12, "the county auditor shall transfer an additional amount necessary to meet this obligation from the property tax increment revenue apportioned to the agency pursuant to Section 33670, provided that no moneys allocated to the agency's Low and Moderate Income Housing Fund shall be used for this purpose."[85]

Section 33681.15 provides that a redevelopment agency may enter into an agreement with an authorized bond issuer, as defined, to obtain a loan from the issuer in order to make the payment required by section 33681.12. If the redevelopment agency fails to repay the loan in accordance with the schedule provided to the county auditor, the trustee for the bonds shall promptly notify the county auditor of the amount that is past due.[86] The county auditor shall reallocate from the county or city legislative body and shall pay, on behalf of the redevelopment agency, the past due amount from the first available proceeds of the property tax allocation that would otherwise be transferred to the legislative body.[87] While all other activities of sections 33681.12-33681.14, by their terms, would occur within fiscal years 2004-2005 or 2005-2006, the failure of a redevelopment agency to make timely payments on its loan from an authorized bond issuer could occur at some later time. If and when that failure occurs, it triggers the requirement of the county auditor to extract the funds from allocations otherwise required to be made to the county or city with which the redevelopment agency is associated. Therefore, this activity is not limited to the 2004-2005 and 2005-2006 fiscal years, as are all other ERAF III shift activities discussed in the above analysis.

As discussed in *City of El Monte v. Commission on State Mandates* (Cal. Ct. App. 3d Dist. 2000) 83 Cal.App.4th 266, a redevelopment agency is not an eligible claimant before the Commission.[88] However, there are mandated activities found in the plain language of the test claim statute, as noted above, imposed upon counties. Those activities that are imposed upon the counties constitute mandated new programs or higher levels of service. The activities are new, with respect to prior law, and the activities fall uniquely upon local government.

The Commission finds that Health and Safety Code sections 33681.12, 33681.13, 33681.14, and 33681.15, as added or amended by Statutes 2004, chapter 211 (SB 1096), or Statutes 2004, chapter 610 (AB 2115), mandate a new program or higher level of service on counties as specified below:

> <u>For the county auditor to perform the following activities for 2004-2005 and 2005-2006 fiscal years only:</u>
>
> - Receive funds directly from a redevelopment agency in the amount identified by the Director of Finance, and deposit those funds in the county's ERAF.[89]

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[85] Health and Safety Code section 33681.14 (added by Stats. 2004, ch. 211 (SB 1096)).

[86] Health and Safety Code section 33681.15(f) (added by Stats 2004, ch. 610 (AB 2115)).

[87] Health and Safety Code section 33681.15(g) (added by Stats 2004, ch. 610 (AB 2115)).

[88] See also, *Bell Community Redevelopment Agency v. Woosley*, (1985) 169 Cal.App.3d 24, at pp. 33-34; *Brown v. Community Redevelopment Agency*, (1985) 168 Cal.App.3d 1014 at p. 1020.

[89] Health and Safety Code section 33681.12(a) (added by Stats. 2004, ch. 211 (SB 1096); amended by Stats 2004, ch. 610 (AB 2115)).

- Receive from the legislative body of the relevant city or county associated with a redevelopment agency, by March 1 of the applicable fiscal year, a report as to how the redevelopment agency intends to secure the funds required to be transferred to the county.[90]

- If a redevelopment agency fails to transmit the full amount of funds required by Section 33681.12, is precluded by court order from transmitting that amount, or is otherwise unable to meet its full obligation pursuant to section 33681.12, by no later than May 15 of the applicable fiscal year, transfer any amount necessary to meet the obligations determined under section 33681.12 from the legislative body's allocations pursuant to Chapter 6 (commencing with Section 95) of the Revenue and Taxation Code.[91]

- If the legislative body of the relevant city or county, pursuant to Section 33681.12(d), reported to the county auditor that it intended to remit the amount required on behalf of the redevelopment agency and the legislative body fails to transmit the full amount as authorized by section 33681.12 by May 10 of the applicable fiscal year, by no later than May 15 of the applicable fiscal year, transfer an amount necessary to meet the redevelopment agency's obligation pursuant to section 33681.12 from the legislative body's allocations pursuant to Chapter 6 (commencing with Section 95) of the Revenue and Taxation Code. If the amount of the legislative body's allocations are not sufficient to meet the redevelopment agency's obligation pursuant to section 33681.12, transfer an additional amount necessary to meet the redevelopment agency's obligation from the property tax increment revenue apportioned to the redevelopment agency pursuant to Section 33670, provided that no moneys allocated to the agency's Low and Moderate Income Housing Fund shall be used for this purpose.[92]

<u>For the county auditor to perform the following activity beginning July 1, 2004:</u>

- If a redevelopment agency enters into an agreement with an authorized issuer, as defined, pursuant to section 33681.15, in order to obtain a loan, financed by bonds, to make the payment required by section 33681.12 to the county auditor for deposit in the county's ERAF, the county auditor shall receive a schedule of payments for that loan. And in the event the redevelopment agency fails to timely repay the loan in accordance with the schedule, the county auditor shall receive notification from the trustee for the bonds of the amount that is past due. The county auditor shall then reallocate funds from the legislative body of the community associated with a redevelopment agency and shall pay to the authorized issuer, on behalf of the redevelopment agency, the past due amount on the loan from the first available proceeds of the property tax allocation that would otherwise be transferred to the legislative body pursuant to Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code. This transfer shall be deemed a reallocation of the property tax revenue from the legislative body to the

[90] Health and Safety Code section 33681.12(d) (added by Stats. 2004, ch. 211 (SB 1096); amended by Stats 2004, ch. 610 (AB 2115)).

[91] Health and Safety Code section 33681.13(e) (added by Stats. 2004, ch. 211 (SB 1096)

[92] Health and Safety Code section 33681.14(c) (added by Stats. 2004, ch. 211 (SB 1096)).

agency for the purpose of payment of the loan, and not as a payment by the legislative body on the loan.[93]

Reimbursement is not required to calculate the amount of moneys to be remitted to the county auditor by a redevelopment agency.[94]

d. Revenue and Taxation Code sections 97.31, 98.02, and 97.77, as added or amended by Statutes 2004, chapter 211 (SB 1096), Statutes 2004, chapter 610 (AB 2115)

Section 97.31, as amended by Statutes 2004, chapter 211 (SB 1096) provides for reductions of ERAF shifts in the 1993-1994 fiscal year. The prior section provided as follows:

> The Director of Finance may direct the county auditor to reduce the amount of the transfer to the Educational Revenue Augmentation Fund determined pursuant to subdivision (a) of Section 97.3 for any eligible county in accordance with subdivision (b) of this section, and also shall reduce the amount of that transfer for certain counties in accordance with subdivision (c).

The amended section provides:

> The Director of Finance shall direct the county auditor to reduce, in the 1993-94 fiscal year, the amount of the transfer to the Educational Revenue Augmentation Fund determined pursuant to subdivision (a) of Section 97.3 for any eligible county in accordance with subdivision (b) of this section, and also shall direct the county auditor to reduce, in the 1993-94 fiscal year, the amount of that transfer for certain counties in accordance with subdivision (c).

The claimant alleges that "Revenue and Taxation Code section 97.31 requires the County auditor to perform numerous duties at the request of the Department of Finance."[95] But any activities that might be found in the amended section are mandated for the 1993-1994 fiscal year, and are therefore outside the period of reimbursement for this test claim. The plain language of the amended section has no bearing on the 2004-2005 and 2005-2006 ERAF shift operations conducted by the counties.[96] The prior version of section 97.31 would have provided for reductions in the amounts shifted, without regard to the fiscal year in which the shift was to take place. If the statute had not been amended, its provision for reductions in the ERAF shift might have frustrated the intent of the Legislature with respect to the 2004-2005 and 2005-2006 fiscal year ERAF shifts, by permitting DOF to direct the county to reduce the amount of the ERAF shift in any given year. The Commission finds that section 97.31, as amended by Statutes 2004,

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[93] Health and Safety Code section 33681.15(e-g) (added by Stats 2004, ch. 610 (AB 2115)).

[94] Health and Safety Code section 33681.12 (added by Stats. 2004, ch. 211 (SB 1096); amended by Stats 2004, ch. 610 (AB 2115)).

[95] Exhibit A, Test Claim Filing, at p. 73.

[96] Moreover, even if the statute is read to provide that DOF shall direct a county auditor, in the current year, to retroactively reduce allocations made in the 1993-1994 fiscal year, the counties have not pled any executive orders made by DOF, and therefore no reimbursable activities are found on the basis of this section.

chapter 211 (SB 1096) does not impose any new mandated activities upon local government within the period of reimbursement of this test claim.

Section 98.02 was amended by Statutes 2004, chapter 211 (SB 1096) to delete former subdivision (j), which required a county auditor to "compute an amount that is equal to 60 percent of the total amount transferred to all qualifying cities pursuant to this section…" There are no new mandated activities imposed by the deletion of this provision. The Commission finds that section 98.02, as amended, does not mandate a new program or higher level of service on counties and is, therefore, denied.

Section 97.77 provides that either an enterprise or nonenterprise special district "shall not pledge…through a bond covenant to pay debt service costs on debt instruments issued by the district, any ad valorem property tax revenue that would otherwise be dedicated to the reduction required by Sections 97.72 and 97.73." This section, as added by Statutes 2004, chapter 211 (SB 1096), prohibits certain actions by special districts, and does not impose any new mandated activities on counties. Section 97.77, as added, does not mandate a new program or higher level of service on counties and is, therefore, denied.

2. Vehicle License Fee Swap

The VLF Swap requires counties to redirect property taxes from the ERAF, or from school districts and community college districts if the ERAF is insufficient, in order to provide a more stable source of funding for city and county governments. The VLF Swap also provides funding levels that increase with property values in each successive year.[97]

a. Revenue and Taxation Code sections 97.70 and 97.76 (added by Stats. 2004, ch. 211 (SB 1096); amended by Stats. 2004, ch. 610 (AB 2115))

Section 97.70 provides that a county auditor shall reduce the total amount of ad valorem property tax otherwise required to be allocated to a county's ERAF by the countywide VLF adjustment amount.[98] The section provides also that if, after performing the adjustments and allocations required by section 97.68, "there is not enough ad valorem property tax revenue that is otherwise required to be allocated to a county Educational Revenue Augmentation Fund for the auditor to complete the allocation reduction," the auditor shall reduce the total amount of ad valorem property tax revenue otherwise required to be allocated to school districts and community college districts in the county, in order to yield the remainder of the countywide VLF adjustment amount. Direct reductions to school districts and community college districts are made in proportion to each district's share of total ad valorem property tax revenue.[99] However, direct reductions to school districts and community college districts are prohibited for so-called "basic aid" districts, or those districts for which local revenues are sufficient to fund schools to the level

[97] Exhibit X, LAO Report, Insufficient ERAF, at p. 7.

[98] Revenue and Taxation Code section 97.70(a)(1)(A) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)).

[99] Revenue and Taxation Code section 97.70(a)(1)(B) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)).

required by Proposition 98.[100] The countywide VLF adjustment amount is allocated to the Vehicle License Fee Property Tax Compensation Fund established in the treasury of each county.[101]

The auditor is required to allocate the moneys in the Vehicle License Fee Property Tax Compensation Fund to each city in the county, and to the county or city and county, based on each entity's VLF adjustment amount.[102] The auditor allocates one-half of the entity's VLF adjustment amount on or before January 31 of each fiscal year, and the other one-half on or before May 31 of each fiscal year.[103] The calculations required to determine the VLF adjustment amounts are as follows:

> (1)''Vehicle license fee adjustment amount'' for a particular city, county, or a city and county means, subject to an adjustment under paragraph (2) and Section 97.71, all of the following:
>
> (A) For the 2004–05 fiscal year, an amount equal to the difference between the following two amounts:
>
> (i) The estimated total amount of revenue that would have been deposited to the credit of the Motor Vehicle License Fee Account in the Transportation Tax Fund, including any amounts that would have been certified to the Controller by the auditor of the County of Ventura under subdivision (j) of Section 98.02, as that section read on January 1, 2004, for distribution under the law as it read on January 1, 2004, to the county, city and county, or city for the 2004–05 fiscal year if the fee otherwise due under the Vehicle License Fee Law (Pt. 5 (commencing with Section 10701) of Div. 2) was 2 percent of the market value of a vehicle, as specified in Section 10752 and 10752.1 as those sections read on January 1, 2004.
>
> (ii) The estimated total amount of revenue that is required to be distributed from the Motor Vehicle License Fee Account in the Transportation Tax Fund to the county, city and county, and each city in the county for the 2004–05 fiscal year under Section 11005, as that section read on the operative date of the act that amended this clause.

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[100] Revenue and Taxation Code section 97.70(a)(1)(B) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)). See also Revenue and Taxation Code section 95, defining "excess tax school entity," also known as "basic aid" schools or school districts; Exhibit X, LAO Report: Insufficient ERAF, at p. 10 ["…state law does not allow county auditors to shift property taxes from basic aid districts to fund the VLF swap…"].

[101] Revenue and Taxation Code section 97.70(a)(2) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)).

[102] Revenue and Taxation Code section 97.70(b)(1) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)).

[103] Revenue and Taxation Code section 97.70(b)(2) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)).

(B) (i) Subject to an adjustment under clause (ii), for the 2005–06 fiscal year, the sum of the following two amounts:

(I) The difference between the following two amounts:

(Ia) The actual total amount of revenue that would have been deposited to the credit of the Motor Vehicle License Fee Account in the Transportation Tax Fund, including any amounts that would have been certified to the Controller by the auditor of the County of Ventura under subdivision (j) of Section 98.02, as that section read on January 1, 2004, for distribution under the law as it read on January 1, 2004, to the county, city and county, or city for the 2004–05 fiscal year if the fee otherwise due under the Vehicle License Fee Law (Part 5 (commencing with Section 10701) of Division 2) was 2 percent of the market value of a vehicle, as specified in Sections 10752 and 10752.1 as those sections read on January 1, 2004.

(Ib) The actual total amount of revenue that was distributed from the Motor Vehicle License Fee Account in the Transportation Tax Fund to the county, city and county, and each city in the county for the 2004–05 fiscal year under Section 11005, as that section read on the operative date of the act that amended this sub-subclause.

(II) The product of the following two amounts:

(IIa) The amount described in subclause (I).

(IIb) The percentage change from the prior fiscal year to the current fiscal year in gross taxable assessed valuation within the jurisdiction of the entity, as reflected in the equalized assessment roll for those fiscal years. For the first fiscal year for which a change in a city's jurisdictional boundaries first applies, the percentage change in gross taxable assessed valuation from the prior fiscal year to the current fiscal year shall be calculated solely on the basis of the city's previous jurisdictional boundaries, without regard to the change in that city's jurisdictional boundaries. For each following fiscal year, the percentage change in gross taxable assessed valuation from the prior fiscal year to the current fiscal year shall be calculated on the basis of the city's current jurisdictional boundaries.

(ii) The amount described in clause (i) shall be adjusted as follows:

(I) If the amount described in subclause (I) of clause (i) for a particular city, county, or city and county is greater than the amount described in subparagraph (A) for that city, county, or city and county, the amount described in clause (i) shall be increased by an amount equal to this difference.

(II) If the amount described in subclause (I) of clause (i) for a particular city, county, or city and county is less than the amount described in subparagraph (A) for that city, county, or city and county, the amount described in clause (i) shall be decreased by an amount equal to this difference.

(C) For the 2006–07 fiscal year and for each fiscal year thereafter, the sum of the following two amounts:

(i) The vehicle license fee adjustment amount for the prior fiscal year, if Section 97.71 and clause (ii) of subparagraph (B) did not apply for that fiscal year, for that city, county, and city and county.

(ii) The product of the following two amounts:

(I) The amount described in clause (i).

(II) The percentage change from the prior fiscal year to the current fiscal year in gross taxable assessed valuation within the jurisdiction of the entity, as reflected in the equalized assessment roll for those fiscal years. For the first fiscal year for which a change in a city's jurisdictional boundaries first applies, the percentage change in gross taxable assessed valuation from the prior fiscal year to the current fiscal year shall be calculated solely on the basis of the city's previous jurisdictional boundaries, without regard to the change in that city's jurisdictional boundaries. For each following fiscal year, the percentage change in gross taxable assessed valuation from the prior fiscal year to the current fiscal year shall be calculated on the basis of the city's current jurisdictional boundaries.[104]

The *countywide* VLF adjustment amount is defined as the sum of the VLF adjustment amounts for all entities in the county. On or before June 30 of each fiscal year, the auditor is required to report to the State Controller the VLF adjustment amount for the county and each city in the county for that fiscal year, based on the calculations required in section 97.70(c)(1).[105] However, for the 2004-2005 and 2005-2006 fiscal years, section 97.76 requires the Controller to determine the countywide VLF adjustment amount, and the VLF adjustment amounts for each city and county, as follows:

(a) On or before September 1, 2004, the Controller shall determine the countywide vehicle license fee adjustment amount, as defined in Section 97.70, for the 2004–05 fiscal year and the vehicle license fee adjustment amount, as defined in Section 97.70, for each city, county, and city and county for the 2004–05 fiscal year, and notify the county auditor of these amounts.

(b) On or before September 1, 2005, the Controller shall determine the amount specified in clause (i) of subparagraph (B) of paragraph (1) of subdivision (c) of Section 97.70 for each city, county, and city and county and notify the county auditor of these amounts.[106]

Because the Controller is directed to calculate the adjustment amounts for the 2004-2005 and 2005-2006 fiscal years, the county auditor is only required to perform the above-described calculations under section 97.70(c)(1)(C), for the 2006-2007 fiscal year and after. The claimant requests reimbursement for "[r]eview of the VLF Adjustment amounts determined by the State

[104] Revenue and Taxation Code section 97.70(c)(1) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)).

[105] Revenue and Taxation Code section 97.70(c)(3) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)).

[106] Revenue and Taxation Code section 97.76 (Stats. 2004, ch. 211 (SB 1096)).

Controller's Office," but no review is required by the plain language of the statutes. For the 2004-2005 and 2005-2006 fiscal years, the county auditor is only required to make the reductions in amounts identified by the Controller.

The reductions and shifts of funds described above are mandated, based on the plain language of the statutes. These activities are also new, with respect to prior law. Therefore, the test claim statutes mandate a new program or higher level of service, within the meaning of article XIII B, section 6.

The Commission finds that Revenue and Taxation Code section 97.70, as added by Statutes 2004, chapter 211 (SB 1096), and amended by Statutes 2004, chapter 610 (AB 2115), requires each county to perform the following new activities:

Beginning July 1, 2004:

- Establish a Vehicle License Fee Property Tax Compensation Fund in the treasury of the county.[107] This is a one-time activity, by definition.
- Reduce the total amount of ad valorem property tax otherwise required to be allocated to a county's ERAF by the countywide VLF fee adjustment amount.[108]
- If, after performing the adjustments and allocations required by section 97.68, there is not enough ad valorem property tax revenue that is otherwise required to be allocated to a county ERAF for the auditor to complete the allocation reduction, the auditor shall also reduce the total amount of ad valorem property tax revenue otherwise required to be allocated to all school districts and community college districts in the county, to produce the remainder of the countywide VLF adjustment amount. Reductions to school districts and community college districts shall be made in proportion to each district's share of total ad valorem property tax revenue. School districts and community college districts subject to reductions when ERAF moneys are insufficient shall not include any districts that are excess tax school entities, as defined in Revenue and Taxation Code section 95.[109]
- Allocate the countywide VLF adjustment amount to the Vehicle License Fee Property Tax Compensation Fund established in the treasury of each county.[110]
- Allocate the moneys in the Vehicle License Fee Property Tax Compensation Fund to each city in the county, and to the county or city and county, based on each entity's VLF

[107] Revenue and Taxation Code section 97.70(a)(2) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)).

[108] Revenue and Taxation Code section 97.70(a)(1)(A) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)).

[109] Revenue and Taxation Code section 97.70(a)(1)(B) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)).

[110] Revenue and Taxation Code section 97.70(a)(2) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)).

adjustment amount.[111] Allocate one-half of the entity's VLF adjustment amount on or before January 31 of each fiscal year, and the other one-half on or before May 31 of each fiscal year.[112]

- On or before June 30 of each fiscal year, report to the Controller the VLF adjustment amount for the county and each city in the county for that fiscal year.[113]

Beginning July 1, 2006:

- Calculate each entity's VLF adjustment amount, and the countywide VLF adjustment amount, defined as the sum of the VLF adjustment amounts of all entities in the county, pursuant to section 97.70(c)(1)(C).[114]

  This activity includes increasing the prior year's VLF fee adjustment amount for each entity based on the percentage change from the prior fiscal year to the current fiscal year in gross taxable assessed valuation within the jurisdiction of the entity, as reflected in the equalized assessment roll for those fiscal years.

Reimbursement is not required for calculating each entity's VLF adjustment amount for the 2004-2005 and 2005-2006 fiscal years.

b. Sections 96.81, 98.02, and 97.75, as added or amended by Statutes 2004, chapter 211 (SB 1096), and Statutes 2004, chapter 610 (AB 2115)

Section 96.81 is also alleged by the claimant to impose reimbursable state-mandated activities; section 96.81 provides as follows:

> Notwithstanding any other provision of law, the property tax apportionment factors applied in allocating property tax revenues in a county for which a Controller's audit conducted under Section 12468 of the Government Code between July 1, 1993, and June 30, 2001, determined that an allocation method was required to be adjusted and a reallocation was required for prior fiscal years, are deemed to be correct. However, for the 2001-02 fiscal year and each fiscal year thereafter, property tax apportionment factors applied in allocating property tax revenues in a county described in the preceding sentence shall be determined on the basis of property tax apportionment factors for prior fiscal years that have

[111] Revenue and Taxation Code section 97.70(b)(1) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)).

[112] Revenue and Taxation Code section 97.70(b)(2) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)).

[113] Revenue and Taxation Code section 97.70(c)(3) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)).

[114] Revenue and Taxation Code section 97.70(c)(1)(C) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)). See also Revenue and Taxation Code section 97.76 (Stats. 2004, ch. 211 (SB 1096)).

been fully corrected and adjusted, pursuant to the review and recommendation of the Controller, as would be required in the absence of the preceding sentence.[115]

The claimant alleges that this provision requires the counties to "redo property tax apportionment factors applied in allocating property tax revenues in a county based on property tax apportionment factors for prior fiscal years that have been fully corrected and adjusted, pursuant to the review and recommendation of the State Controller's Office."[116] But the plain language of the statute belies the existence of any new program or higher level of service. The first sentence above provides for a situation in which apportionment factors applied between 1993 and 2001 are deemed to be correct. The second sentence indicates that for the 2001-2002 fiscal year and after, apportionment factors must be determined on the basis of apportionment factors for prior fiscal year that have been fully corrected and adjusted, "*as would be required in the absence of the preceding sentence*." The Commission finds that no new mandated activities are imposed by this section; the section only provides for an exception, "deeming" correct the calculation of apportionment factors for prior years.

The claimant also requests reimbursement to "Calculate Unitary Tax Roll in excess of the 2%, beginning with fiscal year 2005-06. Note: AF91 for 2004-05. (See Volume III, pages 15-16)." It is unclear to which of the test claim statutes this activity refers. Moreover, pages 15-16 of Volume III of the claimant's filing show no connection to any statute or code section, or any narrative explanation of the claimed activity. This activity is therefore denied.

Section 98.02, also pled, addresses a number of special treatments or dispensations for the county of Ventura. This section was amended by Statutes 2004, chapter 211 to delete subdivision (j), which required the auditor to "compute an amount that is equal to 60 percent of the total amount transferred to all qualifying cities pursuant to this section," and to "certify that amount to the Controller for allocation of funds to the county pursuant to subdivision (a) of Section 11005." The Commission finds that there are no new mandated activities imposed by the deletion of that subdivision.[117]

Section 97.75 provides that for the 2004-2005 and 2005-2006 fiscal years, "a county shall not impose a fee, charge, or other levy on a city, nor reduce a city's allocation of ad valorem property tax revenue, in reimbursement for the services performed by the county under Sections 97.68 and 97.70." For the 2006-2007 fiscal year and each year thereafter, "a county may impose a fee, charge, or other levy on a city for these services, but the fee, charge, or other levy shall not exceed the actual cost of providing these services."[118] Section 97.68, as discussed in this analysis, constitutes the bulk of the Triple Flip activities required of counties. Section 97.70, as discussed above, details the requirements of the VLF Swap. Section 97.75 provides that a county may levy fees or charges against cities for services provided relating to the Triple Flip and the VLF Swap, but not until the 2006-2007 fiscal year. The Commission finds that section

[115] Exhibit A, Test Claim Filing, at p. 33; Revenue and Taxation Code section 96.81 (Stats. 2004, ch. 211 (SB 1096).

[116] Exhibit A, Test Claim, Volume I, at p. 34.

[117] Revenue and Taxation Code section 98.02 (Stats. 2004, ch. 211 (SB 1096)).

[118] Revenue and Taxation Code section 97.75 (Stats. 2004, ch. 211 (SB 1096)).

97.75, as added by Statutes 2004, chapter 211 (SB 1096), does not impose any mandated activities upon local government. However, section 97.75 is analyzed below with respect to whether counties have incurred increased costs mandated by the state.

Accordingly, the Commission finds that Sections 96.81, 98.02, and 97.75, as added or amended by Statutes 2004, chapter 211, and Statutes 2004, chapter 610 do not mandate a new program or higher level of service on counties.

3. Triple Flip Shift

In *City of Alhambra v. County of Los Angeles* the California Supreme Court explains the Triple Flip succinctly as follows:

> In 2004, the voters approved Proposition 57, the California Economic Recovery Bond Act, which allowed the state to sell up to $15 billion in bonds to close the state budget deficit. (Gov. Code, § 99050.) In order to create a dedicated revenue source to guarantee repayment of these bonds without raising taxes, the Legislature had passed already section 97.68, a temporary revenue measure that shifts revenue in a three-stage process known as the "Triple Flip." (Stats. 2003, 5th Ex.Sess.2003–2004, ch. 2, § 4.1.) In the first "flip," 0.25 percent of local sales and use tax revenues are diverted to the state for bond repayment. (§§ 97.68, subd. (b)(2), 7203.1, 7204.) In the second "flip," the lost local sales and use tax revenues are replaced by property tax revenue that would have been placed in the county ERAF but are instead set aside in a Sales and Use Tax Compensation Fund established in each county's treasury. (§ 97.68, subds.(a), (c)(1)-(6).) In the final "flip," any shortfall to schools caused by the reduction of funds to the county ERAF is compensated out of the state's general fund. This so-called "Triple Flip" is slated to end once the Recovery Act bonds are repaid. (§§ 97.68, subd. (b)(1), 7203.1; Gov. Code, § 99006, subd. (b).)[119]

a. Revenue and Taxation Code section 97.68 (added by Stats. 2003, ch. 162; amended by Stats. 2004, ch. 211 (SB 1096)).

Section 97.68 provides that during the "fiscal adjustment period," the amount otherwise required to be allocated to a county's ERAF shall be reduced by the county auditor by the "countywide adjustment amount," and deposited in a "Sales and Use Tax Compensation Fund" (SUTCF) established in the treasury of each county. The funds shifted from ERAF to the SUTCF are then to be back-filled by direct appropriations from the state to school districts and community colleges.[120]

During the fiscal adjustment period, "in lieu local sales and use tax revenues," defined as "revenues that are transferred under this section to a county or city from a Sales and Use Tax Compensation Fund or an Educational Revenue Augmentation Fund," shall be allocated among

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[119] *City of Alhambra v. County of Los Angeles* (2012) 55 Cal.4th 707, at pp. 715-716.

[120] Revenue and Taxation Code section 97.68 (Stats. 2003, ch. 162 (AB 1766); Stats. 2004, ch. 211 (SB 1096)). See also, Exhibit X, LAO Report, Insufficient ERAF, at p. 5.

the county and cities in the county in amounts identified by Finance.[121] Finance is required to identify the portion of the countywide adjustment amount to be allocated to each city and to the county, and notify the county auditor of those amounts. Note that the claimant requests reimbursement for "review of the countywide adjustment amounts,"[122] but no such review is required by the plain language of the statutes, as discussed below. A county auditor "shall allocate one-half of the amount [identified by Finance for each city and for the county] in each January during the fiscal adjustment period and shall allocate the balance of that amount in each May during the fiscal adjustment period."[123]

At the end of each fiscal year, Finance recalculates the portions of the countywide adjustment amount estimated for the county, and for each city within the county, and notifies the county auditor of the corrected amount.[124] The county auditor then adjusts the allocation to that city or to the county in the following year, either transferring the difference from the SUTCF to the city or county, or reducing the amount otherwise allocated to the city or county and transferring that amount instead to the ERAF. If there are not sufficient funds remaining in the SUTCF to make the required adjustments, the county auditor shall transfer sufficient funds from the ERAF.

The fiscal adjustment period, during which these calculations and adjustments must be made, is defined as beginning in the 2004-2005 fiscal year, and extending until the Director of the Department of Finance notifies the State Board of Equalization that the period is over, and the bonds have been repaid.[125] That notification is provided for in Government Code 99006. Revenue and Taxation Code section 7203.1 explains also that when the notification provided for in section 99006 of the Government Code is made, the suspension of cities' and counties' authority to impose a 0.25% tax rate under Revenue and Taxation Code sections 7202 and 7203 is also ended (the 0.25% tax suspension is the first step of the Triple Flip, and represents the designated revenue stream for repaying the economic recovery bonds). Section 97.68(d) provides that when section 7203.1 "ceases to be operative," the countywide adjustment amount for the fiscal year in which that occurs is calculated differently, essentially providing for a pro-rata shift, based on the quarter of the fiscal year in which the suspension of sales and use tax authority is ended.[126]

The activities required of county auditors are mandatory, based on the plain language of the statute. The activities are also new; these shifts were not required under prior law. Finally, the

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[121] Revenue and Taxation Code section 97.68(c) (Stats. 2003, ch. 162 (AB 1766); Stats. 2004, ch. 211 (SB 1096)).

[122] Exhibit A, Test Claim, Volume I, at p. 31.

[123] Revenue and Taxation Code section 97.68(c)(2) (Stats. 2003, ch. 162 (AB 1766); Stats. 2004, ch. 211 (SB 1096)).

[124] Revenue and Taxation Code section 97.68(c)(3) (Stats. 2003, ch. 162 (AB 1766); Stats. 2004, ch. 211 (SB 1096)).

[125] Revenue and Taxation Code section 97.68(a-b) (Stats. 2003, ch. 162 (AB 1766); Stats. 2004, ch. 211 (SB 1096)).

[126] Revenue and Taxation Code section 97.68(d) (Stats. 2003, ch. 162 (AB 1766); Stats. 2004, ch. 211 (SB 1096)).

activities required fall uniquely upon local government, except where DOF is required to calculate and identify the amounts to adjust, and recalculate based upon actual sales and use taxes not transmitted in a given fiscal year.[127] Therefore the activities discussed above impose a mandated new program or higher level of service upon counties, within the meaning of article XIII B, section 6.

The remaining provisions of section 97.68 do not impose activities upon local government, but rather are prohibitive in nature. Section 97.68(e) provides that for the 2005-2006 fiscal year and thereafter, "the amounts determined under subdivision (a) of Section 96.1, or any successor to that provision, *may not reflect* any portion of any property tax revenue allocation required by this section for a preceding fiscal year." Section 97.68(f) provides that this section "*may not be construed* to do any of the following…" And section 97.68(g) states that existing tax exchange or revenue sharing agreements entered into prior to the operative date of this section shall be deemed to be temporarily modified to account for the reduced revenues. None of these provisions impose mandated activities upon counties, based on the plain language of the statute.

The Commission finds that Revenue and Taxation Code section 97.68, as added by Statutes 2003, chapter 162 (AB 1766), and amended by Statutes 2004, chapter 211 (SB 1096), mandates a new program or higher level of service on counties for the following activities, beginning in the 2004-2005 fiscal year:

- Establish a Sales and Use Tax Compensation Fund in the treasury of the county.[128] This is a one-time activity, by definition.
- During the fiscal adjustment period, reduce, by the countywide adjustment amount provided by the Department of Finance, the amount otherwise required to be allocated to a county's ERAF, and deposit that amount in the Sales and Use Tax Compensation Fund.[129]

  This section does not require the county to calculate the countywide adjustment amount; the amount is annually estimated by the Department of Finance, pursuant to section 97.68(b)(2), except in a fiscal year in which the suspension of 0.25 percent taxing authority is ended, pursuant to Revenue and Taxation Code section 7203.1.
- During the fiscal adjustment period, allocate revenues in the Sales and Use Tax Compensation Fund among the county and the cities in the county pursuant to the portions of the countywide adjustment amount identified by the Department of Finance for each city and for the county. Allocate one half of the amount identified for each city and for the county in each January during the fiscal adjustment period, and one half the

[127] *E.g.*, Revenue and Taxation Code section 97.68(b)(2); (c)(1) (Stats. 2003, ch. 162 (AB 1766); Stats. 2004, ch. 211 (SB 1096)).

[128] Revenue and Taxation Code section 97.68(a)(2) (Stats. 2003, ch. 162 (AB 1766); Stats. 2004, ch. 211 (SB 1096)).

[129] Revenue and Taxation Code section 97.68(a-b) (Stats. 2003, ch. 162 (AB 1766); Stats. 2004, ch. 211 (SB 1096)).

amount identified for each city and for the county in each May during the fiscal adjustment period.[130]

This section does not require the county auditor to calculate the portion of the countywide adjustment amount attributable to the county and each city within the county; the amounts are provided by the Department of Finance, pursuant to section 97.68(c)(1), and recalculated after the end of each fiscal year, pursuant to section 97.68(c)(3), except a fiscal year in which the suspension of 0.25 percent taxing authority is ended, pursuant to Revenue and Taxation Code section 7203.1.

- If the amount recalculated by the Department of Finance after the end of each fiscal year based on the actual amount of sales and use taxes not transmitted for the prior fiscal year is greater than the amount allocated to a city or to the county based on the portion of the countywide adjustment amount estimated by the Department of Finance, transfer an amount of ad valorem property tax revenue equal to this difference from the Sales and Use Tax Compensation Fund to that local agency.[131]
- If the amount recalculated by the Department of Finance after the end of each fiscal year based on the actual amount of sales and use taxes not transmitted for the prior fiscal year is less than the amount allocated to a city or to the county based on the portion of the countywide adjustment amount estimated by the Department of Finance, in the fiscal year following the fiscal year for which the allocation was made, reduce the total amount of ad valorem property tax revenue otherwise allocated to that city or county from the Sales and Use Tax Compensation Fund by an amount equal to this difference and instead allocate this difference to the county ERAF.[132]
- If there is an insufficient amount of moneys in a county's Sales and Use Tax Compensation Fund to make the necessary transfers, transfer from the county ERAF to the Sales and Use Tax Compensation Fund an amount sufficient to make the full amount of these transfers.[133]
- If the suspension of sales and use tax authority under section 7203.1 ceases to be operative on October 1 of any fiscal year:
    - Allocate that portion of the countywide adjustment amount attributable to the county and each city within the county on or before January 31 of that fiscal year. The countywide adjustment amount shall be defined as the combined total revenue loss to the county and each city within the county, as estimated by the director of the Department of Finance based on the prior year's *first quarter* sales and use tax revenues transmitted under section 7204; *plus* the difference between 1) the total amount allocated from the Sales and Use Tax Compensation Fund

[130] Revenue and Taxation Code section 97.68(c) (Stats. 2003, ch. 162 (AB 1766); Stats. 2004, ch. 211 (SB 1096)).

[131] *Ibid.*

[132] *Ibid.*

[133] *Ibid.*

among the county and the cities in the county pursuant to the portions of the countywide adjustment amount identified by the Department of Finance in the prior year; and 2) the actual amount of sales and use tax not transmitted to all entities in the county for the prior year as a result of the 0.25% suspension of local sales and use tax authority.

- If, for any county or city, the portion of the countywide adjustment amount allocated to that entity from the Sales and Use Tax Compensation Fund is greater than the actual total amount of local sales and use tax revenue that was not transmitted to the entity for the prior fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by Section 7203.1, on or before January 31 of the following fiscal year, reallocate from the entity to the county ERAF the difference between those amounts.
- If, for any county or city, the portion of the countywide adjustment amount allocated to that entity from the Sales and Use Tax Compensation Fund is less than the actual total amount of local sales and use tax revenue that was not transmitted to the entity for the prior fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by Section 7203.1, on or before January 31 of the following fiscal year, reallocate from the county Educational Revenue Augmentation Fund to that entity the difference between those amounts.[134]

  Section 97.68(d)(1) does not require the county auditor to calculate or identify countywide adjustment amount, or the portion attributable to the county and to each city within the county, or the difference between the countywide adjustment amounts allocated to the county and to each city and the actual sales and use tax revenues not transmitted to the county and to each city as a result of the suspension of sales and use tax authority; the county auditor shall be notified of those amounts by the director of the Department of Finance.[135]

- If the suspension of sales and use tax authority under section 7203.1 ceases to be operative on January 1 of any fiscal year:
  - Allocate that portion of the countywide adjustment amount attributable to the county and each city within the county; one half of the amount on or before January 31 of that fiscal year, and the remaining half of the amount on or before May 31 of that fiscal year. The countywide adjustment amount shall be defined as the combined total revenue loss to the county and each city within the county, as estimated by the director of the Department of Finance based on the sales and use tax revenues transmitted under section 7204 for the *first two quarters* of the prior fiscal year as determined by the Board of Equalization and reported to the

[134] Revenue and Taxation Code section 97.68(d)(1) (Stats. 2003, ch. 162 (AB 1766); Stats. 2004, ch. 211 (SB 1096)).

[135] Revenue and Taxation Code section 97.68(c)(3); (d)(1)(C)(ii) (Stats. 2003, ch. 162 (AB 1766); Stats. 2004, ch. 211 (SB 1096)).

director on or before that August 15; *plus* the difference between the total amount allocated to all entities in the county in the prior year and the actual amount of sales and use tax not transmitted to all entities in the county for the prior year.

- If, for any county or city, the portion of the countywide adjustment amount allocated to that entity from the Sales and Use Tax Compensation Fund is greater than the actual total amount of local sales and use tax revenue that was not transmitted to the entity for the prior fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by Section 7203.1, on or before January 31 of the following fiscal year, reallocate from the entity to the county ERAF the difference between those amounts.
- If, for any county or city, the portion of the countywide adjustment amount allocated to that entity from the Sales and Use Tax Compensation Fund is less than the actual total amount of local sales and use tax revenue that was not transmitted to the entity for the prior fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by Section 7203.1, on or before January 31 of the following fiscal year, reallocate from the county ERAF to that entity the difference between those amounts.[136]

  Section 97.68(d)(2) does not require the county auditor to calculate or identify countywide adjustment amount, or the portion attributable to the county and to each city within the county, or the difference between the countywide adjustment amounts allocated to the county and to each city and the actual sales and use tax revenues not transmitted to the county and to each city as a result of the suspension of sales and use tax authority; the county auditor shall be notified of those amounts by the director of the Department of Finance.[137]

- If the suspension of sales and use tax authority under section 7203.1 ceases to be operative on April 1 of any fiscal year:
  - Reduce the amount otherwise required to be allocated in May of that fiscal year from the Sales and Use Tax Compensation Fund by the amount reported by director representing that portion of the countywide adjustment amount attributable to the estimated sales and use tax revenue losses resulting from the rate suspension applied by section 7203.1 for the fourth quarter of that fiscal year for the county and each city in the county.
  - After May allocations have been made, transfer any moneys remaining in the county Sales and Use Tax Compensation Fund to the county ERAF.
  - If, for any county or city, the portion of the countywide adjustment amount allocated to that entity from the Sales and Use Tax Compensation Fund is greater than the actual total amount of local sales and use tax revenue that was not

[136] Revenue and Taxation Code section 97.68 (d)(2) (Stats. 2003, ch. 162 (AB 1766); Stats. 2004, ch. 211 (SB 1096)).

[137] Revenue and Taxation Code section 97.68(c)(3); (d)(2)(C)(ii) (Stats. 2003, ch. 162 (AB 1766); Stats. 2004, ch. 211 (SB 1096)).

transmitted to the entity for the prior fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by Section 7203.1, on or before January 31 of that fiscal year, reallocate from the entity to the county ERAF the difference between those amounts.

- If, for any county or city, the portion of the countywide adjustment amount allocated to that entity from the Sales and Use Tax Compensation Fund is less than the actual total amount of local sales and use tax revenue that was not transmitted to the entity for the prior fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by Section 7203.1, on or before January 31 of the following fiscal year, reallocate from the county ERAF to that entity the difference between those amounts.[138]

  Section 97.68(d)(3) does not require the county auditor to calculate or identify countywide adjustment amount, or the portion attributable to the county and to each city within the county, or the difference between the countywide adjustment amounts allocated to the county and to each city and the actual sales and use tax revenues not transmitted to the county and to each city as a result of the suspension of sales and use tax authority; the county auditor shall be notified of those amounts by the director of the Department of Finance.[139]

- If the suspension of sales and use tax authority under section 7203.1 ceases to be operative on July 1 of any fiscal year:
  - If, for any county or city, the portion of the countywide adjustment amount allocated to that entity from the Sales and Use Tax Compensation Fund is greater than the actual total amount of local sales and use tax revenue that was not transmitted to the entity for the prior fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by Section 7203.1, on or before January 31 of that fiscal year, reallocate from the entity to the county ERAF the difference between those amounts.
  - If, for any county or city, the portion of the countywide adjustment amount allocated to that entity from the Sales and Use Tax Compensation Fund is less than the actual total amount of local sales and use tax revenue that was not transmitted to the entity for the prior fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by Section 7203.1, on or before January 31 of the following fiscal year, reallocate from the county ERAF to that entity the difference between those amounts. [140]

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[138] Revenue and Taxation Code section 97.68(d)(3) (Stats. 2003, ch. 162 (AB 1766); Stats. 2004, ch. 211 (SB 1096)).

[139] Revenue and Taxation Code section 97.68(c)(3); (d)(3)(C)(ii) (Stats. 2003, ch. 162 (AB 1766); Stats. 2004, ch. 211 (SB 1096)).

[140] Revenue and Taxation Code section 97.68(d)(4) (Stats. 2003, ch. 162 (AB 1766); Stats. 2004, ch. 211 (SB 1096)).

> **Section 97.68(d)(4) does not require** the county auditor to calculate or identify countywide adjustment amount, or the portion attributable to the county and to each city within the county, or the difference between the countywide adjustment amounts allocated to the county and to each city and the actual sales and use tax revenues not transmitted to the county and to each city as a result of the suspension of sales and use tax authority; the county auditor shall be notified of those amounts by the director of the Department of Finance.[141]

B. Some of the test claim statutes impose increased costs mandated by the state on counties within the meaning of Government Code section 17514.

Government Code section 17514 provides that "'[c]osts mandated by the state' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution." Government Code section 17564 provides that "[n]o claim shall be made pursuant to Sections 17551, 17561, or 17573, nor shall any payment be made on claims submitted pursuant to Sections 17551, or 17561, or pursuant to a legislative determination under Section 17573, unless these claims exceed one thousand dollars."

The claimant has presented a cost study, based on survey responses of county staff, and including a number of planning, implementation, and administrative duties that LA County identifies as being required by the test claim statutes. Many of the activities for which the claimant has presented cost data are indeed mandated by the plain language of the test claim statutes. For example, establishing new accounts, such as the Vehicle License Fee Property Tax Compensation Fund, and the Sales and Use Tax Compensation Fund, is clearly required by the plain language, as discussed above. Similarly, allocating and adjusting revenues as directed by DOF and SCO, is clearly mandated, as discussed above. However, a number of activities alleged in the cost study, such as "[r]eview of the 'countywide adjustment amounts' for the Sales and Use Tax and Vehicle License Fee as submitted by [DOF]," analyze the legislation and conduct training for county departments, or answer questions from other taxing jurisdictions in the county, are not required by the plain language of the test claim statutes. These activities may be reasonably necessary to comply with the mandate, as determined at the parameters and guidelines phase, and will require evidence in the record. That evidence must demonstrate that the alleged reasonably necessary activities are reasonably necessary to implement the reimbursable activities mandated by the test claim statutes and approved in this test claim decision. All alleged costs, however, are included in the cost study provided by the claimant.

The claimant estimates costs to implement the ERAF III, VLF Swap, and Triple Flip for the 2004-2005 and 2005-2006 fiscal years to be $13,301,018, and $12,580,829, respectively.[142] The

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[141] Revenue and Taxation Code section 97.68(c)(3); (d)(4)(B)(2) (Stats. 2003, ch. 162 (AB 1766); Stats. 2004, ch. 211 (SB 1096)).

[142] Exhibit B, Test Claim Volume II, at pp. 6-29.

claimant is only required to allege increased costs of $1000 and the costs alleged clearly exceed the initial $1000 requirement.[143]

However, further analysis is required to determine if any of the exceptions to "costs mandated by the state" in Government Code section 17556 are applicable.

1. Fee authority authorized by Revenue and Taxation Code section 97.75 applied to mandated activities under the VLF Swap and Triple Flip ends reimbursement for those activities on June 30, 2006, with one exception (Gov. Code, § 17556(d)).

Government Code section 17556 provides, in pertinent part, that the Commission "shall not find" costs mandated by the state, if:

> The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. This subdivision applies regardless of whether the authority to levy charges, fees, or assessments was enacted or adopted prior to or after the date on which the statue or executive order was enacted or issued.[144]

The claimant argues that "funding disclaimers are not available to bar recovery of otherwise reimbursable costs." The claimant cites to Revenue and Taxation Code section 97.75, which specifically bars, for the 2004-2005 and 2005-2006 fiscal years, the imposition of a fee or other levy by a county upon a city, "in reimbursement for the services performed by the county under sections 97.68 and 97.70."[145] For those years, then, no fees are permitted, with respect to the VLF Swap mandated under section 97.70 or the Triple Flip mandated by section 97.68. The claimant argues:

> Here the County has no authority to levy service charges, fees or assessments under the test claim legislation or under other authority. In fact the test claim legislation explicitly prohibits the County from imposing a service charge, fee or assessment to pay for services claimed herein under Revenue and Taxation Code Section 97.75.[146]

However, the same section goes on to state that for fiscal year 2006-2007 and after, "a county *may impose a fee, charge, or other levy on a city for these services*," not to exceed the actual costs of providing these services.[147] Section 97.75 states, in its entirety:

> Notwithstanding any other provision of law, for the 2004–05 and 2005–06 fiscal years, a county shall not impose a fee, charge, or other levy on a city, nor reduce a city's allocation of ad valorem property tax revenue, in reimbursement for the services performed by the county under Sections 97.68 and 97.70. For the 2006–07 fiscal year and each fiscal year thereafter, a county may impose a fee, charge,

[143] Government Code section 17564.

[144] Government Code section 17556(d) (Stats. 2010, ch. 719 (SB 856)).

[145] Revenue and Taxation Code section 97.75 (Stats. 2004, ch. 211 (SB 1096)).

[146] Exhibit A, Test Claim, at p. 125.

[147] *Ibid*.

> or other levy on a city for these services, but the fee, charge, or other levy shall not exceed the actual cost of providing these services.[148]

The provision authorizes a county to charge the cities for the costs of performing the "services" required by the Triple Flip and the VLF Swap in 2006-2007 or after, but the section is not clear with respect to what "services" may give rise to costs chargeable against the cities. The California Supreme Court addressed the extent of this fee authority, though on an unrelated claim, in *City of Alhambra*, *supra*: "we conclude that section 97.75 permits a county to charge cities for only the new, incremental costs associated with a county auditor's services in administering the Triple Flip and VLF Swap."[149] The court analyzed the term "services," as used in section 97.75, holding that the provision "merely authorizes counties to demand from cities payment for only the actual cost of *administering the Triple Flip and VLF Swap* and nothing more." Based on the court's conclusion in *City of Alhambra*, counties are permitted to charge cities for the actual costs of administering the Triple Flip and the VLF Swap, which includes, as discussed above, calculating VLF adjustment amounts, for the county and each city within the county, beginning in fiscal year 2006-2007.[150]

In *Connell v. Superior Court*,[151] the court of appeal held that reimbursement was barred where water districts had authority to levy sufficient fees or charges to cover the costs of mandated activities, notwithstanding the districts' demonstration that such fees were not economically feasible. Similarly, in *Clovis Unified School District v. Chiang*,[152] the court of appeal upheld the Controller's decision to reduce reimbursement to the extent of authorized fees, whether the community colleges chose to exercise their authority or not. Here, as a matter of law, the counties have the authority to impose a fee or charge upon the cities for the administrative costs of implementing the VLF Swap and the Triple Flip, beginning in the 2006-2007 fiscal year. Given that the administrative costs of the VLF Swap and Triple Flip programs are the only costs alleged in this test claim, and based on the reasoning of *Connell*, and *Clovis*, *supra*, the Commission cannot find costs mandated by the state, in the face of sufficient fee authority, beginning on July 1, 2006 (fiscal year 2006-2007).

The supplemental filing submitted by the claimant continues to stress, relying on section 97.75, that "costs incurred in performing the work necessary to comply with the sections 97.68 and 97.70, for fiscal year 2004-05 and 2005-06 as detailed in Attachment A, are recoverable solely under the subject test claim."[153] The claimant's exhibits and submissions,[154] as well as the test

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[148] Revenue and Taxation Code section 97.75 (Stats. 2004, ch. 211 (SB 1096)).

[149] 55 Cal.4th 707, at p. 720.

[150] See Revenue and Taxation Code sections 97.70(c)(1), and 97.76, as added or amended by Statutes 2004, chapter 2119 (SB 1096), and Statutes 2004, chapter 610 (AB 2115).

[151] (Cal. Ct. App. 3d Dist. 1997) 59 Cal.App.4th 382.

[152] (Cal. Ct. App. 3d Dist. 2010) 188 Cal.App.4th 794.

[153] Exhibit F, Claimant's Supplemental Filing on Fee Information, at p. 2.

[154] See, e.g., Declaration of Kelvin Aikens, Exhibit B, Volume II-Declarations, at p. 5; Declaration of Darlene Hoang, Exhibit B, Volume II-Declarations, at p. 33.

claim narrative itself,[155] fail to acknowledge the express fee authority provided in the second sentence, and instead focus on the prohibition found in the first sentence, with one exception: the document, "SB 1096 Guidelines," submitted by the claimant in support of the test claim, acknowledges that in 2006-2007 and after, counties will be authorized to allocate against the cities the costs of administering the VLF Swap and the Triple Flip.[156] The SB 1096 Guidelines were in part the subject of dispute in *City of Alhambra, supra*, but the issue before the court was not *whether* counties could recoup costs of administering the Triple Flip and VLF Swap, but the *method* by which those costs could be recouped.[157]

But in this context the case of the City and County of San Francisco demands a different result. Where in *Connell* the water districts were authorized to charge users to cover the costs of mandated activities, and in *Clovis* the community college districts were authorized to charge students, up to a certain amount, for their health services, here the counties are authorized to charge cities for the administrative costs of the VLF Swap and the Triple Flip. For all other cities that authority is sufficient to offset the costs of the mandate, and leads to a conclusion that no increased costs are incurred. This is so because, article XIII B, section 6 is intended to protect the tax revenues of the local government;[158] if a source of revenue other than the local proceeds of taxes is available to cover the costs of the mandate, reimbursement must either be denied (*Connell, supra*), or offset to the extent of the available revenue (*Clovis, supra*). Here, while the City and County of San Francisco is required to perform the reductions and transfers under sections 97.70 and 97.68, just as is every other county, the City and County of San Francisco is one consolidated local government with no separate or subordinate city government upon which to levy a fee or charge; the county would in effect be charging itself, which cannot logically be characterized as anything other than the proceeds of local taxes.[159,160]

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[155] Exhibit A, Test Claim, at pp. 11-12.

[156] See "SB 1096 Guidelines," authored by the Accounting Standards Committee of the California State Association of Auditors, Exhibit D, Volume IV Documentation, at p. 117.

[157] 55 Cal.4th at pp. 718-720.

[158] See *County of Fresno v. State of California* (1991) 53 Cal.3d 482, at p. 487.

[159] *County of Fresno, supra*, at p. 487 [Section 17556 "effectively construes the term 'costs' in the constitutional provision as excluding expenses that are recoverable from sources other than taxes."]

[160] See Government Code section 23138, defining the boundaries of San Francisco city and county. See also San Francisco Administrative Code, section 2.1-1 ["The powers of the City and County, except the powers reserved to the people or delegated to other officials, boards or commissions by the Charter, shall be vested in the Board of Supervisors and shall be exercised as provided in the Charter. [¶]The exercise of all rights and powers of the City and County when not prescribed in the Charter shall be as provided by ordinance or resolution of the Board of Supervisors."] (Ordinance 65-13, File No. 130018, approved April 17, 2013, effective May 17, 2013.)

Similarly, in *City of San Jose*,[161] counties were authorized to charge cities and school districts for the costs of booking suspects into the county jail who were arrested within the jurisdiction of the cities or school districts. The court held that cities were not eligible for reimbursement of costs shifted from one local entity to another in this manner, because the charges were not costs mandated by the state, but imposed by another local government entity. But the City and County of San Francisco, *acting as a county*, could not, and logically would not, have availed itself of the authority to charge the city for booking arrestees under those statutes, because the jurisdiction of the City and County is one and the same. Therefore the City of San Francisco would not have incurred costs under that statute, as did the City of San Jose.

In the context of the statutes addressed in *City of San Jose*, *supra*, the City of San Francisco would not have incurred costs exacted by the County, because the jurisdiction of local law enforcement and the courts is unified. In the context of the statutes addressed in *Connell*, *supra*, there was a subordinate entity that the districts were empowered to charge, to generate offsetting revenues in the form of fees. And, in the context of *Clovis*, *supra*, there was a "user" that the community college districts were authorized to charge. Here, there is no subordinate entity for the City and County of San Francisco to impose the charges upon; and the City and County is mandated to incur the same costs as other counties.

Therefore the Commission finds that section 17556(d) does not bar the Commission from finding costs mandated by the state in fiscal year 2006-2007 and after, within the meaning of Government Code section 17514, *for the City and County of San Francisco only*. As for all other counties, section 97.75 provides for sufficient fee authority to cover the costs of mandated activities beginning in fiscal year 2006-2007, and therefore no costs mandated by the state may be found after June 30, 2006. Thus reimbursement is required for the City and County of San Francisco beginning in the 2004-2005 fiscal year, and continuing for each fiscal year that the City and County can show increased costs. For all other counties, reimbursement is required only for the 2004-2005 and 2005-2006 fiscal years for the administrative activities required by sections 97.68 and 97.70.

2. <u>There is no evidence of offsetting savings or revenues to pay for the program pursuant to Government Code section 17556(e)</u>

Section 17556(e) provides that the Commission shall not find costs mandated by the state if:

> The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate. This subdivision applies regardless of whether a statute, executive order, or appropriation in the Budget Act or other bill that either provides for offsetting savings that result in no net costs or provides for additional revenue specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate was

[161] *City of San Jose v. State of California* (Cal. Ct. App. 6th Dist. 1996) 45 Cal.App.4th 1802.

> enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued.[162]

The claimant asserts that section 17556(e) does not bar reimbursement of this test claim, as follows:

> No offsetting savings to local agencies or school districts were provided. Further, no revenue that was specifically intended to fund the costs of the State mandates claimed herein was provided. In this regard, no dedicated State, federal, local, or other non-local funds was available to implement the test claim legislation.[163]

There is nothing in the plain language of the test claim statutes, or of any other law revealed in the record, that provides offsetting savings, or additional revenue specifically intended to fund the costs of the mandated activities. The Commission finds that section 17556(e) does not bar reimbursement.

3. The voter initiative exception to reimbursement in Government Code section17556(f) does not apply

The claimant notes that Propositions 1A and 57 are both potentially relevant to this claim, but argues that neither Proposition 1A, nor Proposition 57, is sufficiently related to the ERAF or VLF shifting provisions of the test claim statutes.[164] The claimant argues that section 17556(f) is not applicable, as follows:

> Prop lA guarantees 0.65% VLF rate to cities and counties. The VLF/property tax Swap is statutory and is not referred to in any way by Proposition 1A. There's nothing in Proposition 1A that otherwise contemplates, refers to, or obliquely references ERAF III. While Proposition lA does reference the triple flip, it only prohibits the Legislature from extending the triple flip beyond the date on which it terminates according to the existing statute (the day the fiscal recovery bonds are paid off). However, the triple flip is not "reasonably within the scope of" Proposition lA simply because the same subject matter is referenced.
>
> Proposition 57 added Government Code section 99072(c) which pledges revenues raised from the additional 1/4 cent sales tax to the "Fiscal Recovery Fund" to pay off the fiscal recovery bond. Section 99072(c), however, it is [*sic*] not part of the test claim legislation. Further, there is nothing in Prop 57 which indicates that the additional 1/4 cent sales tax, requiring a "triple flip", [*sic*] is "necessary to implement Prop 57.["]
>
> With respect to whether "triple flip" is "reasonably within the scope of" Proposition 57, the test claim legislation goes far beyond any bond financing scheme envisioned by the framers of Prop 57. In this regard, the Senate Floor Analysis of SB 1096, included herein in Volume II, page 157, indicates that SB 1096 "contains legislative findings and declarations that this entire measure

[162] Government Code section 17556(e) (Stats. 2010, ch. 719 (SB 856)).

[163] Exhibit A, Test Claim, at p. 126.

[164] Exhibit A, Test Claim, at pp. 12, Fn 3.

> [including the "triple flip"] is a comprehensive revision to local government finances ...", [*sic*] not encompassed by Prop 57.
>
> Further, SB 1096 was not affected by Proposition 65 either. Prop 65 was not approved by the voters in the November 2, 2004 general election and, accordingly, is also not applicable here.
>
> Therefore, the ballot initiative funding disclaimer set forth in Government Code Section 17556 (f) does not bar the recovery of 'costs mandated by the state', [*sic*] as defined in Government Code Section 17514.[165]

Section 17556(f) provides that the Commission shall not find costs mandated by the state if:

> The statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted prior to or after the date on which the ballot measure was approved by the voters.[166]

California School Boards Association v. State of California (*CSBA I*) makes clear that the statutory exclusion from reimbursement contained in the first sentence is consistent with the subvention requirements of article XIII B, section 6.[167] The court in *CSBA I* reasoned that the subvention requirement applies to mandates imposed by the Legislature, not by the voters; the voters' powers of initiative and referendum are reserved powers, and not vested in the Legislature, and are therefore not limited by article XIII B, section 6. *CSBA I* holds that the reimbursement requirement applies only to state-mandated costs, not costs incurred by way of "the people acting pursuant to the power of initiative."[168]

"Having established that costs imposed on local governments by ballot measure mandates need not be reimbursed by the state," and thus approving the statutory exclusion to the extent of statutes "expressly included in" a ballot measure, the court considered also whether activities embodied in a test claim statute that are "necessary to implement" a voter-enacted ballot measure are subject to reimbursement. In *San Diego Unified School District v. Commission on State Mandates*, costs that were incidental to a federal mandate were not reimbursable under section 17556(c), because those costs were imposed under Education Code provisions "adopted to implement a federal due process mandate." The *CSBA I* court concluded that "[t]he language of [section 17556(f)] relieving the State of the obligation to reimburse a local government for duties 'necessary to implement' a ballot measure is *unobjectionable* because it corresponds to the Supreme Court's holding in *San Diego Unified* that state statutes codifying federal mandates are

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[165] Exhibit A, Test Claim, at pp. 125-126 [As noted above, at the time this test claim was filed, section 17556(f) prohibited a finding of costs if the test claim statute imposed duties "necessary to implement, reasonably within the scope of, or expressly included in" a ballot measure.].

[166] Government Code section 17556(f) (Stats. 2010, ch. 719, (SB 856)).

[167] *California School Boards Association v. State of California* (*CSBA I*) (Cal. Ct. App. 3d Dist. 2009) 171 Cal.App.4th 1183, 1206-1207; 1210.

[168] *Ibid.*

not reimbursable." [169,170] The court also held that the "necessary to implement" test of section 17556(f) should be strictly construed; that the language was actually *narrower* than the "adopted to implement" language regarding federal mandates, approved in *San Diego Unified*.[171] The court at the same time struck down, as being overbroad, the "reasonably within the scope of" language also provided in subdivision (f), and the Legislature amended the code section the following year to excise the offending language.[172]

Section 17556(f) also states that the rule "applies regardless of whether the statute or executive order was adopted prior to or after the date on which the statute or executive order was enacted or issued." This provision, like the "reasonably within the scope of," and "necessary to implement" tests, first appeared in section 17556 in 2005.[173] This last provision, stating that the order of enactment is not material to the analysis under section 17556(f), has not yet been determined in the courts.[174] However, the Commission must presume that the statutes enacted by the Legislature are constitutional,[175] and therefore if a voter-enacted ballot initiative embracing the same subject matter were to be enacted either before or after a test claim statute, an analysis under section 17556(f) would be in order.

Despite the claimant's protestations that Propositions 1A and 57 have no bearing on the test claim statutes, the following analysis will show that there is indeed a connection, and that the propositions in question embraced much of the same subject matter. However, the analysis ultimately concludes that reimbursement is not barred by section 17556(f), because the test claim statutes do not impose duties *expressly included in* or *necessary to implement* the ballot measures in question.

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[169] *San Diego Unified*, *supra*, (2004) 33 Cal.4th 859.

[170] *California School Boards Association v. State* (*CSBA I*) (Cal. Ct. App. 3d Dist. 2009) 171 Cal.App.4th 1183, at p. 1213 [emphasis added].

[171] *Ibid*.

[172] Government Code section 17556(f) (Stats. 2010, ch. 719 (SB 856) [amended to remove "reasonably within the scope of," as an alternative test to "expressly included in," or "necessary to implement," consistent with the court's decision in *CSBA I*, *supra*]). Note that the test claim invokes the "reasonably within the scope of" language, which was still in force at the time of filing.

[173] As discussed above, the "reasonably within the scope of" test has been disapproved by the courts and removed from the code; compare Statutes 2004, chapter 895 (AB 2855) to Statutes 2005, chapter 72 (AB 138).

[174] The constitutionality of Government Code sections 17570, in conjunction with the amendments to section 17556, is being challenged in *California School Boards Assoc., et al. v. State of California, Commission on State Mandates, John Chiang, as State Controller, and Ana Matosantos, as Director of the Department of Finance,* Alameda County Superior Court, Case No. RG11554698.

[175] *California School Boards Association v. State of California,* (*CSBA II*) (Cal. Ct. App. 4th Dist. 2011) 192 Cal.App.4th 770, 795; *Porter v. City of Riverside* (1968) 261 Cal.App.2d 832, 837.

a. Proposition 57 and the Triple Flip

On August 2, 2003, the Governor signed into law a bond repayment mechanism now known as the Triple Flip. Section 97.68 required a county auditor to reduce and shift funds from the county's ERAF to the Sales and Use Tax Compensation Fund, as discussed above, and to allocate the moneys in the SUTCF to cities and counties, "to reimburse these entities for local tax revenue losses resulting from a specified statute, as provided." The "specified statute" was Statutes 2003-2004, 1st Extraordinary Session, chapter 13 (AB 1X7), in which the Legislature suspended the sales and use tax authority of local government in order to repay recovery bonds authorized by the Legislature.[176] That statute was challenged in the courts, and no bonds were issued.[177]

In December 2003, the Legislature passed, in the 5th extraordinary session, a bill repealing and adding provisions of the Government Code and the Revenue and Taxation Code, relating to fiscal recovery financing: AB5X 9. Additions to the Government Code included section 99050 et seq., which provided authority to issue more bonds, raising greater revenues, to address the state's mounting budget shortfall; the bond provisions were contingent on voter approval at the March 2004 primary election. AB5X 9 also repealed and reenacted section 7203.1 of the Revenue and Taxation Code, which provides for repayment of the deficit financing bonds created by section 99050 et seq., by suspending, until the bonds are repaid, a portion of local governments' authority to impose sales and use taxes, and redirecting funds that would otherwise be raised by those sales and use taxes to repay the bonds. The earlier bond repayment scheme had called for a one-half percent reduction of sales and use tax authority; the later provisions called for a one-quarter percent reduction.[178] AB 5X9 also repealed and reenacted section 97.68 of the Revenue and Taxation Code, which, as discussed above, requires redirecting property tax revenues otherwise required to be allocated to the ERAF, and distributing those to the counties and cities, to make up for the lost sales and use tax revenue.[179] Section 97.68 was amended by AB 5X9 to incorporate subdivision (g), stating that existing tax exchange or revenue sharing agreements involving local agencies would be deemed modified to account for the reduced revenues; the earlier statute had contained similar language in the uncodified section of the bill.[180,181] However, AB 5X9 did not add any new *activities* to be performed by local government and so was not pled in this test claim.

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[176] Exhibit X, AB 1766 Bill Analysis, at p. 1. See also Government Code section 99006; Revenue and Taxation Code section 7203.1 (Stats. 2003-2004, 1st Ex. Sess., ch. 13 (AB 1X7)) [repealed and replaced by Stats. 2003-2004, 5th Ex. Sess., ch. 2 (AB 5X9)].

[177] Exhibit X, Voter Information Guide, Supplemental, March 2, 2004, at p. 7.

[178] *Compare* Revenue and Taxation Code section 7203.1 (Stats. 2003-2004, 1st Ex. Sess., ch. 13 (AB 1X7)) *with* Revenue and Taxation Code section 7203.1 (Stats. 2003-2004, 5th Ex. Sess., ch. 2 (AB 5X9)).

[179] Revenue and Taxation Code section 97.68 (Stats. 2003-2004, 5th Ex. Sess., ch. 2 (AB 5X9)).

[180] See Statutes 2003, ch. 162 (AB 1766) section 2.

[181] The repeal and reenactment of the Triple Flip had no effect on the underlying law with respect to mandates. See *In re Dapper*, 71 Cal.2d 184, at p. 189, citing *Sobey v. Molony*, 40

In March 2004 the voters passed Propositions 57 and 58, adopting both the economic recovery bond and the Balanced Budget Act, which, according to the ballot materials, were each contingent upon the other being adopted.[182] The adoption of Propositions 57 and 58 also made sections 7203.1 and 97.68 of the Revenue and Taxation Code operative, pursuant to section 8 of AB5X 9, thus providing for a steady stream of revenue to repay the bonds.

On August 5, 2004, the Legislature enacted Statutes 2004, chapter 211 (SB 1096), which amended section 97.68 by adding a new subdivision (d). The former provision simply provided:

> (d)(1)If Section 7203.1 ceases to be operative during any calendar quarter that is not the calendar quarter in which the fiscal year begins, the excess amount, as defined in paragraph (2), of the county and each city in the county shall be reallocated from each of those local agencies to the Educational Revenue Augmentation Fund.
>
> (2) For purposes of this subdivision, "excess amount" means the product of both of the following:
>
> (A) The total amount of ad valorem property tax revenue allocated to that local agency pursuant to paragraph (2) of subdivision (c).
>
> (B) That percentage of the fiscal year in which Section 7203.1 is not operative.

Amended subdivision (d) provides for a specific calculation of the countywide adjustment amount in the final year of the fiscal adjustment period, depending on the quarter of the fiscal year in which the bonds are repaid and the suspension of sales and use tax authority is ended. Because amended subdivision (d) provides for an alternative calculation of the countywide adjustment amount, several other provisions of section 97.68 were amended to read, "except as otherwise provided in subdivision (d)."[183]

Statutes 2004, chapter 211 (SB 1096) also amended sections 97.31 and 98.02 of the Revenue and Taxation Code, and added sections 96.81, 97.70, 97.71, 97.72, 97.73, 97.74, 97.75, 97.76, and 97.77 to the Revenue and Taxation Code, and 33681.12, 33681.13, and 33681.14 to the Health and Safety Code. These added sections address the swap of VLF revenues otherwise allocated to the ERAF to cities and counties, and the ERAF III shift, from cities, counties, cities and counties, redevelopment agencies, and special districts. Neither of those programs is directly relevant to the deficit financing bond created by AB5X 9, and enacted by the voters in Proposition 57.

Cal.App.2d, 381, at p. 385 ["When a statute, although new in form, re-enacts an older statute without substantial change, even though it repeals the older statute, the new statute is but a continuation of the old. There is no break in the continuous operation of the old statute, and no abatement of any of the legal consequences of acts done under the old statute."]

[182] See Exhibit X, Voter Guide, Supplemental, March 2, 2004 Primary Election, at p. 10 ["The California Economic Recovery Bond Act will not take effect unless voters approve the California Balanced Budget Act, which PROHIBITS BORROWING TO PAY DEFICITS ever again and requires enactment of a BALANCED BUDGET."].

[183] Revenue and Taxation Code section 97.68 (as amended by Statutes 2004, chapter 211 (SB 1096)).

Section 17556(f) only bars reimbursement of mandated increased costs where the mandate imposes duties expressly included in or necessary to implement a voter-enacted ballot measure. As discussed above, the "necessary to implement" test is interpreted very narrowly by the courts. Here, the economic recovery bonds adopted by the voters in Proposition 57 arguably precipitated the Triple Flip, and the ERAF III shift, and perhaps even the VLF Swap. And furthermore, the Triple Flip in particular would not have been made effective without the voters' action. However, there are any number of methods or means that the Legislature *might have chosen* to repay the recovery bonds, and neither the Triple Flip, nor the other two programs, were expressly included in Proposition 57, or "necessary" to implement Proposition 57.[184] Clearly, when Proposition 57 was put before the voters the Legislature had already chosen its preferred solution to repay the bond, if authorized: the Triple Flip had already been put in place; but in no event can it be argued that the Triple Flip was "necessary to implement" the ballot measure, because the ballot measure only approved the state entering into debt to address a then-existing budget shortfall. The ballot measure did not compel any particular method or means by which the debt would be repaid. The Voter Information Guide may be argued to have hinted at the Triple Flip: "[t]he repayment of the bond would result in annual General Fund costs equivalent to one-quarter cent of California's sales tax revenues,"[185] but that statement does not require the reduction of local sales and use tax authority as a means to repay the bonds. Moreover, the oblique reference to "costs equivalent to one-quarter cent" of sales tax revenues, even if it could be argued to make necessary a reduction of local revenue such as imposed by Revenue and Taxation Code section 7203.1, falls short of *requiring* the "elaborate provisions," and the "many accounting functions not previously required," which were envisioned by the Legislature to reimburse local government for the tax revenue lost.[186]

b. Proposition 1A, and The Triple Flip, ERAF III, and VLF Swap

On November 2, 2004, the voters adopted Proposition 1A. Proposition 1A was intended, according to the ballot pamphlet materials, to restrict the Legislature's ability to manipulate local revenues. The Voter Information Guide explains that Proposition 1A "amends the State Constitution to significantly reduce the state's authority over major local government revenue sources." The "major local government revenue sources" include local sales taxes, property taxes, and the VLF. Proposition 1A:

1) [P]rohibits the state from: reducing any local sales tax rate, limiting existing local government authority to levy a sales tax rate, or changing the allocation of local sales tax revenues...

2) [G]enerally prohibits the state from shifting to schools or community colleges any share of property tax revenues allocated to local governments for any fiscal year under the laws in effect as of November 3, 2004…[and]…

[184] See *CSBA I*, *supra* ["necessary to implement" test strictly construed].

[185] Exhibit X, Voter Information Guide, Supplemental, March 2, 2004 Primary Election.

[186] See Exhibit A, Test Claim, at p. 17.

3) If the state reduces the VLF rate below its current level, the measure requires the state to provide local governments with equal replacement revenues.[187]

Proposition 1A added article XIII, section 25.5 of the California Constitution, to provide that "[o]n or after November 3, 2004, the Legislature shall not enact a statute to do any of the following:"

> (1)(A) Except as otherwise provided in subparagraph (B), modify the manner in which ad valorem property tax revenues are allocated in accordance with subdivision (a) of Section 1 of Article XIII A so as to reduce for any fiscal year the percentage of the total amount of ad valorem property tax revenues in a county that is allocated among all of the local agencies in that county below the percentage of the total amount of those revenues that would be allocated among those agencies for the same fiscal year under the statutes in effect on November 3, 2004. ¶…¶
>
> (2)(A) Except as otherwise provided in subparagraphs (B) and (C), restrict the authority of a city, county, or city and county to impose a tax rate under, or change the method of distributing revenues derived under, the Bradley–Burns Uniform Local Sales and Use Tax Law set forth in Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code, as that law read on November 3, 2004. ¶…¶
>
> (3) Except as otherwise provided in subparagraph (C) of paragraph (2), change for any fiscal year the pro rata shares in which ad valorem property tax revenues are allocated among local agencies in a county other than pursuant to a bill passed in each house of the Legislature by roll call vote entered in the journal, two-thirds of the membership concurring.
>
> (4) Extend beyond the revenue exchange period, as defined in Section 7203.1 of the Revenue and Taxation Code as that section read on November 3, 2004, the suspension of the authority, set forth in that section on that date, of a city, county, or city and county to impose a sales and use tax rate under the Bradley–Burns Uniform Local Sales and Use Tax Law.
>
> (5) Reduce, during any period in which the rate authority suspension described in paragraph (4) is operative, the payments to a city, county, or city and county that are required by Section 97.68 of the Revenue and Taxation Code, as that section read on November 3, 2004.
>
> (6) Restrict the authority of a local entity to impose a transactions and use tax rate in accordance with the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code), or change

[187] Exhibit X, Voter Information Guide, Supplemental, November 5, 2004, General Election at p. 6.

> the method for distributing revenues derived under a transaction and use tax rate imposed under that law, as it read on November 3, 2004.[188]

This amendment clearly implicates the Triple Flip, imposed by section 97.68, and the suspension of the Sales and Use Tax intended to finance the economic recovery bonds, and prohibits the state from further "modifying" the allocation of ad valorem property tax revenues, thus implicating the ERAF shifts. Furthermore, as noted above, the fact that Proposition 1A was adopted after the test claim statutes does not bar an analysis under section 17556(f).

However, the limitations expressed in Proposition 1A are expressly prospective, and therefore cannot have retroactive effect on the programs and activities imposed by Statutes 2003, chapter 162, Statutes 2004, chapter 211 (SB 1096), and Statutes 2004, chapter 610 (AB 2115), all of which were in effect prior to November 3, 2004. Furthermore, with respect to the analysis under section 17556(f), the test claim statutes creating the Triple Flip and the VLF Swap cannot be said to be expressly included in or necessary to implement Proposition 1A, not least because Proposition 1A is intended specifically and explicitly to *prohibit* future manipulations of local revenue such as those embodied in the test claim statute, on or after November 3, 2004. As discussed, Proposition 1A was meant to curb the Legislature's authority to implement this sort of manipulation of tax revenues *in the future*, and therefore section 17556(f) does not bar reimbursement of the test claim statutes for which mandated activities are found above.

c. Proposition 65

Proposition 65 was on the November 2, 2004 ballot as an alternative to Proposition 1A, and was expressly made null and void if Proposition 1A were to pass, which it did. The Voter Information Guide stated as follows:

> Proposition 65 on this ballot contains similar provisions affecting local government finance and mandates. (The nearby box provides information on the major similarities and differences between these measures.) Proposition 1A specifically states that if it and Proposition 65 are approved and Proposition 1A receives more yes votes, none of the provisions of Proposition 65 will go into effect.

None of the provisions of Proposition 65 went into effect, pursuant to the results of the November 2, 2004 election. Only a *voter-enacted* ballot measure requires an analysis under section 17556(f). Therefore section 17556(f) is not applicable.

V. Conclusion

The Commission finds that Revenue and Taxation Code sections 97.71, 97.72, 97.73, 97.70, and 97.68, as added or amended by Statutes 2003, chapter 162 (AB 1766); Statutes 2004, chapter 211 (SB 1096); and Statutes 20004, chapter 610 (AB 2115) and Health and Safety Code sections 33681.12, 33681.13, 33681.14, and 33681.15, as added or amended by Statutes 2004, chapter 211 (SB 1096) and Statutes 2004, chapter 610 (AB 2115), impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the activities listed below:

[188] California Constitution, article XIII, section 25.5 (added, Proposition 1A, November 2, 2004, effective November 3, 2004).

A. ERAF III Shift

The following requirements of the test claim statutes impose a reimbursable state-mandated program upon all counties beginning in the 2004-2005 fiscal year.

1. ERAF Shift from Counties and Cities

   For 2004-2005 and 2005-2006 fiscal years only:

   a. Reduce revenue otherwise required to be allocated to each county by the amounts listed in Revenue and Taxation Code section 97.71(a)(1), and deposit that amount in the county's ERAF.[189]

   b. Reduce revenue otherwise required to be allocated to a city and county by an amount identified by the Controller pursuant to Revenue and Taxation Code section 97.71(b)(2-3), and deposit that amount in the county's ERAF.[190]

   c. Reduce revenue otherwise required to be allocated to each city within the county by an amount identified by the Controller pursuant to Revenue and Taxation Code section 97.71(b)(2-3), and deposit that amount in the county's ERAF.[191]

      Beginning July 1, 2004

      a. Where applicable, accept from a city, in lieu of reduction of that city's revenues, an amount equal to the required reduction, and deposit those moneys in the county's ERAF.[192]

Reimbursement is not required for calculating the amounts of revenue otherwise required to be allocated to a city, county, or city and county, which must be reduced and deposited in the county ERAF.[193]

2. ERAF Shift from Special Districts

   For fiscal years 2004-2005 and 2005-2006 only:

   a. Reduce the amount of ad valorem property tax otherwise required to be allocated to an enterprise special district, including an enterprise special district located in

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[189] Revenue and Taxation Code section 97.71(a)(1); (c) (Stats. 2004, ch. 211 (AB 1096); Stats. 2004, ch. 610 (AB 2115)).

[190] Revenue and Taxation Code section 97.71(b); (c) (Stats. 2004, ch. 211 (AB 1096); Stats. 2004, ch. 610 (AB 2115)).

[191] Revenue and Taxation Code section 97.71(c) (Stats. 2004, ch. 211 (AB 1096); Stats. 2004, ch. 610 (AB 2115)).

[192] Revenue and Taxation Code section 97.71(b)(5) (Stats. 2004, ch. 211 (AB 1096); Stats. 2004, ch. 610 (AB 2115)).

[193] Revenue and Taxation Code section 97.71(a)(1); (b)(3) (Stats. 2004, ch. 211 (AB 1096); Stats. 2004, ch. 610 (AB 2115)).

more than one county, in amounts determined by the Controller and received from the Director of Finance, for each enterprise special district in the county.[194]

b. Deposit the amounts reduced from each enterprise special district in the county's ERAF.[195]

c. Reduce the amount of ad valorem property tax otherwise required to be allocated to a nonenterprise special district, including a nonenterprise special district located in more than one county, in amounts determined by the Controller for each special district in each county.[196]

d. Deposit the amounts reduced from each nonenterprise special district in the county's ERAF.[197]

Reimbursement is not required for calculating the amounts of ad valorem property tax otherwise required to be allocated to an enterprise or nonenterprise special district which must be reduced and deposited in the county ERAF.[198]

3. ERAF Shift from Redevelopment Agencies, For fiscal years 2004-2005 and 2005-2006 only:

a. Receive funds directly from a redevelopment agency in the amount identified by the Director of Finance, and deposit those funds in the county's ERAF.[199]

b. Receive from the legislative body of the community associated with a redevelopment agency by March 1 of the applicable fiscal year, a report as to how the redevelopment agency intends to secure the funds required to be transferred to the county.[200]

c. If a redevelopment agency fails to transmit the full amount of funds required by Section 33681.12, is precluded by court order from transmitting that amount, or is otherwise unable to meet its full obligation pursuant to section 33681.12 the

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[194] Revenue and Taxation Code section 97.72(a)(2) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004, ch. 610 (AB 2115)).

[195] Revenue and Taxation Code section 97.72(b) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004, ch. 610 (AB 2115)).

[196] Revenue and Taxation Code section 97.73(a)(2) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004, ch. 610 (AB 2115)).

[197] Revenue and Taxation Code section 97.73(b) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004, ch. 610 (AB 2115)).

[198] Revenue and Taxation Code sections 97.72(a)(2); 97.73(a)(2) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004, ch. 610 (AB 2115)).

[199] Health and Safety Code section 33681.12(a)(1) (added by Stats. 2004, ch. 211 (SB 1096); amended by Stats 2004, ch. 610 (AB 2115)).

[200] Health and Safety Code section 33681.12(d) (added by Stats. 2004, ch. 211 (SB 1096); amended by Stats 2004, ch. 610 (AB 2115)).

county auditor, by no later than May 15 of the applicable fiscal year, shall transfer any amount necessary to meet the obligations determined under section 33681.12 from the legislative body's allocations pursuant to Chapter 6 (commencing with Section 95) of the Revenue and Taxation Code.[201]

d. If the legislative body of the community associated with a redevelopment agency, pursuant to Section 33681.12(d), reported to the county auditor that it intended to remit the amount required on behalf of the redevelopment agency and the legislative body fails to transmit the full amount as authorized by section 33681.12 by May 10 of the applicable fiscal year: the county auditor shall, no later than May 15 of the applicable fiscal year, transfer an amount necessary to meet the redevelopment agency's obligation pursuant to section 33681.12 from the legislative body's allocations pursuant to Chapter 6 (commencing with Section 95) of the Revenue and Taxation Code. If the amount of the legislative body's allocations are not sufficient to meet the redevelopment agency's obligation pursuant to section 33681.12, the county auditor shall transfer an additional amount necessary to meet the redevelopment agency's obligation from the property tax increment revenue apportioned to the redevelopment agency pursuant to Section 33670, provided that no moneys allocated to the agency's Low and Moderate Income Housing Fund shall be used for this purpose.[202]

Reimbursement is not required to calculate the amount of moneys to be remitted to the county auditor by a redevelopment agency.[203]

4. ERAF Shift from Redevelopment Agencies, Beginning July 1, 2004:

a. If a redevelopment agency enters into an agreement with an authorized issuer, as defined, pursuant to section 33681.15, in order to obtain a loan, financed by bonds, to make the payment required by section 33681.12 to the county auditor for deposit in the county's ERAF, the county auditor shall receive a schedule of payments for that loan. And in the event the redevelopment agency fails to timely repay the loan in accordance with the schedule, the county auditor shall receive notification from the trustee for the bonds of the amount that is past due. The county auditor shall then reallocate funds from the legislative body of the community associated with a redevelopment agency and shall pay to the authorized issuer, on behalf of the redevelopment agency, the past due amount on the loan from the first available proceeds of the property tax allocation that would otherwise be transferred to the legislative body pursuant to Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code. This transfer shall be deemed a reallocation of the property tax revenue from the legislative body to

[201] Health and Safety Code section 33681.13(e) (added by Stats. 2004, ch. 211 (SB 1096)

[202] Health and Safety Code section 33681.14(c) (added by Stats. 2004, ch. 211 (SB 1096)).

[203] Health and Safety Code section 33681.12 (added by Stats. 2004, ch. 211 (SB 1096); amended by Stats 2004, ch. 610 (AB 2115)).

the agency for the purpose of payment of the loan, and not as a payment by the legislative body on the loan.[204]

B. Vehicle License Fee Swap

The following requirements of the test claim statutes impose a reimbursable state-mandated program upon all counties for the 2004-2005 and 2005-2006 fiscal years, and for the City and County of San Francisco ONLY, in the 2006-2007 fiscal year and after.

1. Establish a Vehicle License Fee Property Tax Compensation Fund in the treasury of the county.[205] This is a one-time activity, by definition.
2. Reduce the total amount of ad valorem property tax otherwise required to be allocated to a county's ERAF by the countywide vehicle license fee adjustment amount.[206]
3. If, after performing the adjustments and allocations required by section 97.68, there is not enough ad valorem property tax revenue that is otherwise required to be allocated to a county ERAF for the auditor to complete the allocation reduction, the auditor shall also reduce the total amount of ad valorem property tax revenue otherwise required to be allocated to all school districts and community college districts in the county, in order to produce the remainder of the countywide vehicle license fee adjustment amount. Reductions to school districts and community college districts shall be made in proportion to each district's share of total ad valorem property tax revenue. School districts and community college districts subject to reductions when ERAF moneys are insufficient shall not include any districts that are excess tax school entities, as defined in Revenue and Taxation Code section 95.[207]
4. Allocate the countywide vehicle license fee adjustment amount to the Vehicle License Fee Property Tax Compensation Fund established in the treasury of each county.[208]
5. Allocate the moneys in the Vehicle License Fee Property Tax Compensation Fund to each city in the county, and to the county or city and county, based on each entity's vehicle license fee adjustment amount.[209] Allocate one-half of the entity's vehicle

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[204] Health and Safety Code section 33681.15(e-g) (added by Stats 2004, ch. 610 (AB 2115)).

[205] Revenue and Taxation Code section 97.70(a)(2) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)).

[206] Revenue and Taxation Code section 97.70(a)(1)(A) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)).

[207] Revenue and Taxation Code section 97.70(a)(1)(B) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)).

[208] Revenue and Taxation Code section 97.70(a)(2) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)).

[209] Revenue and Taxation Code section 97.70(b)(1) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)).

license fee adjustment amount on or before January 31 of each fiscal year, and the other one-half on or before May 31 of each fiscal year.[210]

6. On or before June 30 of each fiscal year, report to the Controller the vehicle license fee adjustment amount for the county and each city in the county for that fiscal year.[211]

Reimbursement for activities B 1-6 is not required for calculating each entity's vehicle license fee adjustment amount for the 2004-2005 and 2005-2006 fiscal years.[212]

7. For the City and County of San Francisco only: Beginning in the 2006-2007 fiscal year, and continuing thereafter, calculate each entity's vehicle license fee adjustment amount, and the countywide vehicle license fee adjustment amount, defined as the sum of the vehicle license fee adjustment amounts of all entities in the county, pursuant to section 97.70(c)(1)(C).[213]

   This activity includes increasing the prior year's vehicle license fee adjustment amount for each entity based on the percentage change from the prior fiscal year to the current fiscal year in gross taxable assessed valuation within the jurisdiction of the entity, as reflected in the equalized assessment roll for those fiscal years.

C. Triple Flip

The following requirements of the test claim statutes impose a reimbursable state-mandated program upon all counties for the 2004-2005 and 2005-2006 fiscal years, and for the City and County of San Francisco ONLY, beginning in the 2006-2007 fiscal year.

1. Establish a Sales and Use Tax Compensation Fund in the treasury of the county.[214] This is a one-time activity, by definition.
2. During the fiscal adjustment period, reduce, by the countywide adjustment amount provided by the Department of Finance, the amount otherwise required to be

[210] Revenue and Taxation Code section 97.70(b)(2) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)).

[211] Revenue and Taxation Code section 97.70(c)(3) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)).

[212] Revenue and Taxation Code section 97.76 (added, Stats. 2004, ch. 211 (SB 1096); amended Stats. 2004, ch. 610 (AB 2115)).

[213] Revenue and Taxation Code section 97.70(c)(1)(C) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)). See also Revenue and Taxation Code section 97.76 (Stats. 2004, ch. 211 (SB 1096)).

[214] Revenue and Taxation Code section 97.68(a)(2) (Stats.2003, ch. 162 (AB 1766); Stats. 2004, ch. 211 (SB 1096)).

allocated to a county's ERAF, and deposit that amount in the Sales and Use Tax Compensation Fund.[215]

Reimbursement is not required to calculate the countywide adjustment amount; the amount is annually estimated by the Department of Finance, pursuant to section 97.68(b)(2), except in a fiscal year in which the suspension of 0.25 percent taxing authority is ended, pursuant to Revenue and Taxation Code section 7203.1.

3. During the fiscal adjustment period, allocate revenues in the Sales and Use Tax Compensation Fund among the county and the cities in the county pursuant to the portions of the countywide adjustment amount identified by the Department of Finance for each city and for the county. Allocate one half of the amount identified for each city and for the county in each January during the fiscal adjustment period, and one half the amount identified for each city and for the county in each May during the fiscal adjustment period.[216]

   Reimbursement is not required to calculate the portion of the countywide adjustment amount attributable to the county and each city within the county; the amounts are provided by the Department of Finance, pursuant to section 97.68(c)(1), and recalculated after the end of each fiscal year, pursuant to section 97.68(c)(3), except a fiscal year in which the suspension of 0.25 percent taxing authority is ended, pursuant to Revenue and Taxation Code section 7203.1.

4. If the amount recalculated by the Department of Finance after the end of each fiscal year based on the actual amount of sales and use taxes not transmitted for the prior fiscal year is greater than the amount allocated to a city or to the county based on the portion of the countywide adjustment amount estimated by the Department of Finance, transfer an amount of ad valorem property tax revenue equal to this difference from the Sales and Use Tax Compensation Fund to that local agency.[217]

5. If the amount recalculated by the Department of Finance after the end of each fiscal year based on the actual amount of sales and use taxes not transmitted for the prior fiscal year is less than the amount allocated to a city or to the county based on the portion of the countywide adjustment amount estimated by the Department of Finance, in the fiscal year following the fiscal year for which the allocation was made, reduce the total amount of ad valorem property tax revenue otherwise allocated to that city or county from the Sales and Use Tax Compensation Fund by an amount equal to this difference and instead allocate this difference to the county ERAF.[218]

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[215] Revenue and Taxation Code section 97.68(a-b) (Stats. 2003, ch. 162 (AB 1766); Stats. 2004, ch. 211 (SB 1096)).

[216] Revenue and Taxation Code section 97.68(c) (Stats. 2003, ch. 162 (AB 1766); Stats. 2004, ch. 211 (SB 1096)).

[217] *Ibid.*

[218] *Ibid.*

6. If there is an insufficient amount of moneys in a county's Sales and Use Tax Compensation Fund to make the necessary transfers, transfer from the county ERAF to the Sales and Use Tax Compensation Fund an amount sufficient to make the full amount of these transfers.[219]

7. If the suspension of sales and use tax authority under section 7203.1 ceases to be operative on October 1 of any fiscal year:

    a. Allocate that portion of the countywide adjustment amount attributable to the county and each city within the county on or before January 31 of that fiscal year. The countywide adjustment amount shall be defined as the combined total revenue loss to the county and each city within the county, as estimated by the director of the Department of Finance based on the prior year's *first quarter* sales and use tax revenues transmitted under section 7204; *plus* the difference between 1) the total amount allocated from the Sales and Use Tax Compensation Fund among the county and the cities in the county pursuant to the portions of the countywide adjustment amount identified by the Department of Finance in the prior year; and 2) the actual amount of sales and use tax not transmitted to all entities in the county for the prior year as a result of the 0.25% suspension of local sales and use tax authority.

    b. If, for any county or city, the portion of the countywide adjustment amount allocated to that entity from the Sales and Use Tax Compensation Fund is greater than the actual total amount of local sales and use tax revenue that was not transmitted to the entity for the prior fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by Section 7203.1, on or before January 31 of the following fiscal year, reallocate from the entity to the county ERAF the difference between those amounts.

    c. If, for any county or city, the portion of the countywide adjustment amount allocated to that entity from the Sales and Use Tax Compensation Fund is less than the actual total amount of local sales and use tax revenue that was not transmitted to the entity for the prior fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by Section 7203.1, on or before January 31 of the following fiscal year, reallocate from the county ERAF to that entity the difference between those amounts.[220]

Reimbursement is not required, under Section 97.68(d)(1), to calculate or identify countywide adjustment amount, or the portion attributable to the county and to each city within the county, or the difference between the countywide adjustment amounts allocated to the county and to each city and the actual sales and use tax revenues not transmitted to the county and to each city as a result of the suspension of sales and

[219] *Ibid.*

[220] Revenue and Taxation Code section 97.68(d)(1) (Stats. 2004, ch. 211 (SB 1096)).

use tax authority; the county auditor shall be notified of those amounts by the director of the Department of Finance.[221]

8. If the suspension of sales and use tax authority under section 7203.1 ceases to be operative on January 1 of any fiscal year:

   a. Allocate that portion of the countywide adjustment amount attributable to the county and each city within the county; one half of the amount on or before January 31 of that fiscal year, and the remaining half of the amount on or before May 31 of that fiscal year. The countywide adjustment amount shall be defined as the combined total revenue loss to the county and each city within the county, as estimated by the director of the Department of Finance based on the sales and use tax revenues transmitted under section 7204 for the *first two quarters* of the prior fiscal year as determined by the Board of Equalization and reported to the director on or before that August 15; *plus* the difference between the total amount allocated to all entities in the county in the prior year and the actual amount of sales and use tax not transmitted to all entities in the county for the prior year.

   b. If, for any county or city, the portion of the countywide adjustment amount allocated to that entity from the Sales and Use Tax Compensation Fund is greater than the actual total amount of local sales and use tax revenue that was not transmitted to the entity for the prior fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by Section 7203.1, on or before January 31 of the following fiscal year, reallocate from the entity to the county ERAF the difference between those amounts.

   c. If, for any county or city, the portion of the countywide adjustment amount allocated to that entity from the Sales and Use Tax Compensation Fund is less than the actual total amount of local sales and use tax revenue that was not transmitted to the entity for the prior fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by Section 7203.1, on or before January 31 of the following fiscal year, reallocate from the county ERAF to that entity the difference between those amounts.[222]

   Reimbursement is not required, under Section 97.68(d)(2), to calculate or identify countywide adjustment amount, or the portion attributable to the county and to each city within the county, or the difference between the countywide adjustment amounts allocated to the county and to each city and the actual sales and use tax revenues not transmitted to the county and to each city as a result of the suspension of sales and use tax authority; the county auditor shall be notified of those amounts by the director of the Department of Finance.[223]

9. If the suspension of sales and use tax authority under section 7203.1 ceases to be operative on April 1 of any fiscal year:

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[221] Revenue and Taxation Code section 97.68(d)(1)(C)(ii) (Stats. 2004, ch. 211 (SB 1096)).

[222] Revenue and Taxation Code section 97.68 (d)(2) (Stats. 2004, ch. 211 (SB 1096)).

[223] Revenue and Taxation Code section 97.68(d)(2)(C)(ii) (Stats. 2004, ch. 211 (SB 1096)).

a. Reduce the amount otherwise required to be allocated in May of that fiscal year from the Sales and Use Tax Compensation Fund by the amount reported by director representing that portion of the countywide adjustment amount attributable to the estimated sales and use tax revenue losses resulting from the rate suspension applied by section 7203.1 for the fourth quarter of that fiscal year for the county and each city in the county.

b. After May allocations have been made, transfer any moneys remaining in the county Sales and Use Tax Compensation Fund to the county ERAF.

c. If, for any county or city, the portion of the countywide adjustment amount allocated to that entity from the Sales and Use Tax Compensation Fund is greater than the actual total amount of local sales and use tax revenue that was not transmitted to the entity for the prior fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by Section 7203.1, on or before January 31 of that fiscal year, reallocate from the entity to the county ERAF the difference between those amounts.

d. If, for any county or city, the portion of the countywide adjustment amount allocated to that entity from the Sales and Use Tax Compensation Fund is less than the actual total amount of local sales and use tax revenue that was not transmitted to the entity for the prior fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by Section 7203.1, on or before January 31 of the following fiscal year, reallocate from the county ERAF to that entity the difference between those amounts.[224]

Reimbursement is not required, under Section 97.68(d)(3), to calculate or identify countywide adjustment amount, or the portion attributable to the county and to each city within the county, or the difference between the countywide adjustment amounts allocated to the county and to each city and the actual sales and use tax revenues not transmitted to the county and to each city as a result of the suspension of sales and use tax authority; the county auditor shall be notified of those amounts by the director of the Department of Finance.[225]

10. If the suspension of sales and use tax authority under section 7203.1 ceases to be operative on July 1 of any fiscal year:

    a. If, for any county or city, the portion of the countywide adjustment amount allocated to that entity from the Sales and Use Tax Compensation Fund is greater than the actual total amount of local sales and use tax revenue that was not transmitted to the entity for the prior fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by Section 7203.1, on or before January 31 of that fiscal year, reallocate from the entity to the county ERAF the difference between those amounts.

[224] Revenue and Taxation Code section 97.68(d)(3) (Stats. 2004, ch. 211 (SB 1096)).

[225] Revenue and Taxation Code section 97.68(d)(3)(C)(ii) (Stats. 2004, ch. 211 (SB 1096)).

b. If, for any county or city, the portion of the countywide adjustment amount allocated to that entity from the Sales and Use Tax Compensation Fund is less than the actual total amount of local sales and use tax revenue that was not transmitted to the entity for the prior fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by Section 7203.1, on or before January 31 of the following fiscal year, reallocate from the county ERAF to that entity the difference between those amounts. [226]

Reimbursement is not required, under Section 97.68(d)(4), to calculate or identify countywide adjustment amount, or the portion attributable to the county and to each city within the county, or the difference between the countywide adjustment amounts allocated to the county and to each city and the actual sales and use tax revenues not transmitted to the county and to each city as a result of the suspension of sales and use tax authority; the county auditor shall be notified of those amounts by the director of the Department of Finance.[227]

All other test claim statutes and allegations not specifically approved above do not result in a reimbursable state-mandated program subject to article XIII B, section 6 of the California Constitution and are, therefore, denied.

[226] Revenue and Taxation Code section 97.68(d)(4) (Stats. 2004, ch. 211 (SB 1096)).

[227] Revenue and Taxation Code section 97.68(d)(4)(B)(2) (Stats. 2004, ch. 211 (SB 1096)).