DRAFT

STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE ENROLLED BILL ANALYSIS

Date:	**Enrolled**	Bill No:	**Assembly Bill 92**
Tax Program:	**Bradley-Burns Local**	Author:	**Committee on Budget**
Sponsor:	**Author**	Code Sections:	**RTC 97.68**
Related Bills:		Effective Date:	**Upon enactment**

This analysis only addresses the provisions that impact the BOE.

BILL SUMMARY

Among its provisions, this budget trailer bill prepares for the end of the "Triple Flip" by outlining a process to provide final compensation to cities and counties for their 0.25% local sales and use tax revenue loss after the Economic Recovery Bonds are paid-off. The bill also requires the Director of Finance (DOF) to estimate when the notification to the BOE is likely to occur, and revise the countywide adjustment amount upon notification.

ANALYSIS

CURRENT LAW

On March 2, 2004, voters approved Proposition 57, the Economic Recovery Bond Act (Act),[1] which became operative July 1, 2004, and authorized the issuance of up to $15 billion in bonds to finance the accumulated budget deficit.

The Act[2] also increased the statewide tax rate by 0.25% and decreased by a like amount the Bradley-Burns Uniform Local Sales and Use Tax rate (cities and counties are reimbursed for their local tax revenue losses through property tax revenues). The resulting 0.25% state sales and use tax revenues are deposited into the Fiscal Recovery Fund and dedicated to the repayment of the deficit reduction bonds.

Current law[3] provides that cities and counties are reimbursed for the 0.25% local sales tax rate reduction through property tax revenues from the Educational Revenue Augmentation Fund (ERAF). By September 1 of each fiscal year, the DOF, in conjunction with the BOE, prepares an annual estimate of the local sales and use tax revenue losses attributable to the reduction in the local sales and use tax rate. This estimate, known as the "countywide adjustment amount," is based on prior fiscal year transmittals (also referred to as distributions) of actual local sales and tax revenues. Cities and counties receive property tax replacement revenues twice a year—in January and May. At the end of each fiscal year, the property tax replacement revenues are reconciled with the actual local sales and use tax revenues *not* transmitted as a result of the 0.25% local sales and use tax rate reduction.

[1] Assembly Billx5 9, Chapter 2, Statutes of 2003-04 Fifth Extraordinary Session.
[2] Revenue and Taxation Code (RTC) Sections 6051.5 and 6201.5 of the Sales and Use Tax Law and RTC Section 7203.1 of the Bradley-Burns Uniform Local Sales and Use Tax Law.
[3] RTC Section 97.68 of the Property Tax Law.

In addition, Section 97.68 defines "fiscal adjustment period" as the period beginning with the 2004-05 fiscal year and continuing through the fiscal year in which, pursuant to Government Code (GC) Section 99006, the DOF notifies the BOE that the $15 billion Economic Recovery Bonds (ERBs) have been paid or the Fiscal Recovery Fund holds sufficient funds to retire them. Section 97.68 also specifies the manner in which the countywide adjustment amount is to be allocated after the end of the fiscal adjustment period.

PROPOSED LAW

This bill prepares for the end of the triple flip by providing final compensation to cities and counties once the mechanism is no longer needed to repay the ERBs. Specifically, this bill:

- Redefines the "fiscal adjustment period" to instead mean the fiscal year in which the DOF notifies the BOE pursuant to subdivision (b) of GC Section 99006, or the fiscal year in which an additional countywide adjustment amount is determined by the DOF, whichever is later.
- Requires the DOF to estimate when the notification to the BOE is likely to occur within the subsequent 12 months and to determine, at the beginning of each subsequent calendar year quarter, the month in which the notification will occur.
- Requires the DOF, in the calendar year quarter when the DOF determines that the notification to the BOE will occur within either the current or subsequent quarter, to revise the countywide adjustment amount for the current fiscal year such that the countywide adjustment amount is calculated only through the quarter in which DOF gives the notification.
- Requires the DOF, after the end of the revenue exchange period,[4] to provide to the Controller and the Joint Legislative Budget Committee, a schedule of the amounts needed to fully compensate cities and counties for the revenue they did not receive as a result of the 0.25% reduction in the local sales and use tax rate.
- Requires the Controller to transfer the amounts specified in the schedule from the Fiscal Recovery Fund to the Sales and Use Tax Compensation Fund in each county for allocation by the county auditor to each county and each city in the county.

This bill would take effect immediately as a bill related to the 2013 Budget Act.

LEGISLATIVE HISTORY

The original "triple flip" bills, Assembly Billx7 (Chapter 13, Statutes of 2003-04 First Extraordinary Session) and Assembly Bill 1766 (Chapter 162, Statutes of 2003) were signed by Governor Davis on August 2, 2003, as part of the 2003-04 Budget Plan. ABx7 enacted the California Fiscal Recovery Financing Act and authorized the issuance of $10.7 billion in bonds to finance the cumulative fiscal year 2002-03 budget deficit. These bonds were never issued due to a legal challenge. ABx7 and AB 1766 would have become operative on July 1, 2004.

[4] Revenue exchange period as defined in RTC Section 7203.1 means the period on and after July 1, 2004, and before the first day of the first calendar quarter commencing more than 90 days following a notification to the BOE by the DOF pursuant to subdivision (b) of GC Section 99006 (that the Economic Recovery Bonds have been paid or the Fiscal Recovery Fund holds sufficient funds to retire them.)

On December 12, 2003, Governor Schwarzenegger signed Assembly Billx5 9 (Chapter 2, Statutes of 2003-04 Fifth Extraordinary Session), which enacted the Economic Recovery Bond Act and authorized the issuance of up to $15 billion of bonds to finance the accumulated budget deficit. ABx5 9 reduced the tax rates proposed under the original “triple flip” bills (it repealed and added specified statutes that were originally enacted under ABx 7 and AB 1766). As stated previously, the voters approved Governor Schwarzenegger’s $15 billion bond measure (Proposition 57) on March 2, 2004, operative July 1, 2004.

COMMENTS

1. **Sponsor and purpose.** This budget trailer bill contains the necessary statutory changes to implement the 2013 Budget Act related to general government. Among its provisions, it prepares for the end of the triple flip by outlining a process to provide final compensation to cities and counties once the mechanism is no longer needed to pay for the ERBs.
2. **The bill would not change the timing to “turn off” the Triple Flip under current sales and use tax law.** RTC Sections 6051.5, 6201.5, and 7203.1 provide that the 0.25% state sales and use tax rate (dedicated to repay the economic recovery bonds) will cease and the 0.25% local sales and use tax rate will be restored *on the first day of the first calendar quarter commencing more than 90 days following a notification to the BOE by the DOF pursuant to subdivision (b) of GC Section 99006* (when there is sufficient revenue in the Fiscal Recovery Fund to pay off the economic recovery bonds). Under this budget trailer bill, BOE staff would still have 90 days to turn off the Triple Flip. According to the LAO report, *Summary of LAO Findings and Recommendations on the 2013-14 Budget*, the 2013-14 Governor’s Budget expects the economic recovery bonds to be repaid in June 2016. If that estimate is accurate, the triple flip would turn off on October 1, 2016, under current statutes.
3. **This measure corrects unintended consequence of the enabling legislation.** Because of a lag between the time when taxable sales are reported to the BOE and when those amounts are distributed to each city and county, those entities were only compensated for the first three quarters of the triple flip’s first year (2004-05). Every subsequent year, however, cities and counties have been compensated for a full four quarters. The compensation has been based on distributions that took place between April 1 of the prior fiscal year to March 31 of that fiscal year. (Meaning, the July 1 to June 30 fiscal year compensation is based on April 1 to March 31 distributions.)

   The 2013-14 Governor’s Budget estimates the ERBs to be repaid in June 2016, and the triple flip will turn off October 1, 2016. At this point, cities and counties would have been, theoretically, reimbursed for the 0.25% local sales and use tax revenue loss through March 31, 2016, via the existing triple flip mechanism. Therefore, the cities and counties would need to be compensated for another two quarters (April 1, 2016 through September 30, 2016). However, current Section 97.68 only authorizes reimbursement for the first quarter of the current fiscal year (July 1, 2016 through September 30, 2016). Without addressing this issue, cities and counties will fall short of compensation for one quarter—April 1, 2016 through June 30, 2016. A similar shortfall would occur regardless of which calendar quarter the 0.25% rate is restored to cities and counties.

4. **BOE staff has no administrative concerns.** This budget trailer bill makes several changes related to prepare for the end of the triple flip. As explained under comment #3, the original trip flip statute did not contemplate the one quarter lag between the date a taxable sale is reported and the date by which the BOE has sufficient data to determine the correct amount to distribute to cities and counties. This bill provides a method to correct that.

COST ESTIMATE

This bill does not impact the BOE's administrative costs. BOE staff is currently providing DOF the required information.

REVENUE ESTIMATE

This bill does not impact the state's revenues.

Analysis prepared by:	Debra Waltz	916-324-1890	06/27/13
Contact:	Michele Pielsticker	916-322-2376	

ls 0092abenrolleddw.doc