Assembly Bill No. 92

CHAPTER 26

An act to add Sections 53545.15 and 53565 to the Health and Safety Code, to amend Section 97.68 of, and to add Sections 18032 and 24953 to, the Revenue and Taxation Code, and to amend Section 2 of Chapter 777 of the Statutes of 2012, relating to state government, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor June 27, 2013. Filed with Secretary of State June 27, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 92, Committee on Budget. State government.

(1) Existing law provides that there is the Transit-Oriented Development Implementation Fund from which the Department of Housing and Community Development shall provide grants and loans to cities, counties, cities and counties, transit agencies, and developers for the purpose of developing or facilitating the development of higher density uses within close proximity to transit stations that will increase public transit riderships. Existing law appropriates various sums to this fund for use by the department for liquidation of encumbrances for limited periods of time, as specified.

This bill instead would extend the period of time during which the appropriated funds shall be available for liquidation of encumbrances until June 30, 2017, subject to performance-based milestones to be established by the department.

Existing law provides that there is the Regional Planning, Housing, and Infill Incentive Account in the Housing and Emergency Shelter Trust Fund of 2006 from which funds shall be available, upon appropriation by the Legislature, and subject to other conditions and criteria as the Legislature may provide in statute, for infill incentive grants for capital outlay related to infill housing development and other related infill development, and for brownfield cleanup that promotes infill housing development and other related infill development consistent with regional and local plans. Existing law appropriates various sums to this fund for use by the department for liquidation of encumbrances for limited periods of time, as specified.

This bill instead would extend the period of time during which the appropriated funds shall be available for liquidation of encumbrances until June 30, 2017, subject to performance-based milestones to be established by the department.

Because this bill would extend the period of time during which various appropriations are available for use by the department for particular purposes, this bill would make an appropriation.

(2) Existing law requires the county auditor, in each fiscal year, to allocate property tax revenue to local jurisdictions in accordance with specified formulas and procedures, and generally requires that each jurisdiction be allocated an amount equal to the total of the amount of revenue allocated to that jurisdiction in the prior fiscal year, subject to certain modifications, and that jurisdiction's portion of the annual tax increment, as defined. Existing property tax law also reduces the amounts of ad valorem property tax revenue that would otherwise be annually allocated to the counties, cities, and special districts pursuant to these general allocation requirements by requiring, for purposes of determining property tax revenue allocations in each county for the 1992–93 and 1993–94 fiscal years, that the amounts of property tax revenue deemed allocated in the prior fiscal year to the counties, cities, and special districts be reduced in accordance with certain formulas. Existing law requires that the revenues not allocated to the counties, cities, and special districts as a result of these reductions be transferred to the Educational Revenue Augmentation Fund in that county for allocation to school districts, community college districts, and the county office of education.

Existing law requires the county auditor to decrease, for the fiscal adjustment period, as defined, the amount of ad valorem property tax revenue allocated to a county's Educational Revenue Augmentation Fund by the countywide adjustment amount, as defined, and requires the auditor to instead allocate this amount to the Sales and Use Tax Compensation Fund in the county. Existing law requires, during this same period, the county auditor to allocate moneys from the Sales and Use Tax Compensation Fund to cities and counties to reimburse these entities for local tax revenue losses resulting from a specified statute, as provided. Existing law defines the "fiscal adjustment period" as the period beginning with the 2004–05 fiscal year and continuing through the fiscal year in which the Director of Finance provides a notification to the State Board of Equalization, as provided. Existing law specifies the manner in which the countywide adjustment amount is required to be calculated and to be allocated after the end of the fiscal adjustment period.

This bill would redefine the "fiscal adjustment period" to instead mean the fiscal year in which the Director of Finance provides a specified notification to the State Board of Equalization or the fiscal year in which an additional countywide adjustment amount is determined by the Director of Finance, whichever is later. This bill would require the Director of Finance to estimate when the notification to the State Board of Equalization is likely to occur, and to determine the month of that notification, as provided.

This bill would require the Director of Finance, in the calendar year quarter when the director determines that the notification to the State Board of Equalization will occur within either the current or subsequent quarter, to revise the countywide adjustment amount, as specified. This bill would require the Director of Finance, after the end of the revenue exchange period, to provide a schedule to the Controller and the auditor of each county and a copy to the Joint Legislative Budget Committee, of amounts required to be transferred from the Fiscal Recovery Fund to the Sales and Use Tax Compensation Fund in each county, as specified. This bill would require 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 auditor of each county to the county and each city in the county, as provided, thereby making an appropriation.

(3) The Personal Income Tax Law and the Corporation Tax Law exclude the recognition of any gain or loss on the exchange of property held for productive use in a trade or business or for investment, if that property is exchanged solely for property of a like kind that is to be held either for productive use in a trade or business or for investment. Existing law authorizes the Franchise Tax Board to propose an assessment upon a failure to file a return, as provided.

This bill would, for exchanges that occur in taxable years beginning on or after January 1, 2014, require taxpayers to file an informational return with the Franchise Tax Board if the property acquired in the exchange is located out of state. The bill would authorize the Franchise Tax Board to make an estimate of the net income, from any available information, and to propose to assess the amount of tax, interest, and penalties due in a specified manner if the taxpayer fails to file the information return, and fails to file a tax return, as provided.

(4) Existing law, the Housing and Emergency Shelter Trust Fund Act of 2006, authorizes the issuance of bonds in the amount of $2,850,000,000 pursuant to the State General Obligation Bond Law. Proceeds from the sale of these bonds are used to finance various existing housing programs, capital outlay related to infill development, brownfield cleanup that promotes infill development, housing-related parks, and transit-oriented development administered by the Department of Housing and Community Development. Existing law appropriates $50,000,000, and additional moneys, as specified, of bond revenues to the Department of Housing and Community Development. From that amount, existing law allocates $25,000,000, and additional moneys, as specified, from the Regional Planning, Housing, and Infill Incentive Account for infill incentive grants, and $25,000,000, and additional moneys, from the Transit-Oriented Development Implementation Fund for transit-oriented grants and loans, including any moneys allocated and appropriated that become disencumbered and redeposited in the Transit-Oriented Development Account during the 2012–13 fiscal year, for the purpose of funding transit-oriented grants and loans, as specified.

This bill would additionally allocate any moneys allocated and appropriated that become disencumbered and redeposited in the Transit-Oriented Development Account during the 2013–14 fiscal year for the purpose of funding transit-oriented grants and loans, as specified, thereby making an appropriation.

(5) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Appropriation: yes.

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

SECTION 1. Section 53545.15 is added to the Health and Safety Code, to read:

53545.15. (a) Notwithstanding any other law, funds appropriated for deposit into the Transit-Oriented Development Implementation Fund by Item 2240-101-9736 of the Budget Act of 2007, as reappropriated by Item 2240-492 of the Budget Act of 2010; Item 2240-101-9736 of the Budget Act of 2008, as reappropriated by Section 129 of the Budget Act of 2009, as reappropriated by Item 2240-492 of the Budget Act of 2010; Item 2240-101-9736 of the Budget Act of 2009, as reappropriated by Item 2240-492 of the Budget Act of 2010; and subdivision (b) of Section 1 of Chapter 39 of the Statutes of 2008, as reappropriated by Item 2240-492 of the Budget Act of 2010; shall be made available for liquidation of encumbrances until June 30, 2017, subject to performance-based milestones to be established by the department.

(b) The department shall amend the guidelines with revised performance-based milestones to approve disbursement extensions.

(c) The department shall evaluate the revised performance-based milestones on a project by project basis to determine which projects should be granted time extensions within the timeframe specified.

SEC. 2. Section 53565 is added to the Health and Safety Code, to read:

53565. (a) Notwithstanding any other law, funds appropriated for deposit into the Regional Planning, Housing, and Infill Incentive Account in the Housing and Emergency Shelter Trust Fund of 2006 by Item 2240-101-6069 of the Budget Act of 2007, as reappropriated by Item 2240-492 of the Budget Act of 2010; Item 2240-101-6069 of the Budget Act of 2008, as reappropriated by Section 129 of the Budget Act of 2009, as reappropriated by Item 2240-492 of the Budget Act of 2010; Item 2240-101-6069 of the Budget Act of 2009, as reappropriated by Item 2240-492 of the Budget Act of 2010; and subdivision (a) of Section 1 of Chapter 39 of the Statutes of 2008, as reappropriated by Item 2240-492 of the Budget Act of 2010; shall be made available for liquidation of encumbrances until June 30, 2017, subject to performance-based milestones to be established by the department.

(b) The department shall amend the guidelines with revised performance-based milestones to approve disbursement extensions.

(c) The department shall evaluate the revised performance-based milestones on a project by project basis to determine which projects should be granted time extensions within the timeframe specified.

SEC. 3. Section 97.68 of the Revenue and Taxation Code is amended to read:

97.68. Notwithstanding any other provision of law, in allocating ad valorem property tax revenue allocations for each fiscal year during the fiscal adjustment period, all of the following apply:

(a) (1) The total amount of ad valorem property tax revenue otherwise required to be allocated to a county's Educational Revenue Augmentation Fund shall be reduced by the countywide adjustment amount.

(2) The countywide adjustment amount shall be deposited in a Sales and Use Tax Compensation Fund that shall be established in the treasury of each county.

(b) For purposes of this section, the following definitions apply:

(1) "Fiscal adjustment period" means the period beginning with the 2004–05 fiscal year and continuing through the later of either of the following:

(A) The fiscal year in which the Director of Finance notifies the State Board of Equalization pursuant to subdivision (b) of Section 99006 of the Government Code.

(B) The fiscal year in which an additional countywide adjustment amount, as described in subparagraph (B) of paragraph (3) of subdivision (d), is determined.

(2) Except as otherwise provided in subdivision (d), the "countywide adjustment amount" means the combined total revenue loss of the county and each city in the county that is annually estimated by the Director of Finance, based upon the actual amount of sales and use tax revenues transmitted under Section 7204 in that county in the prior fiscal year and any projected growth on that amount for the current fiscal year as determined by the State Board of Equalization and reported to the director on or before August 15 of each fiscal year during the fiscal adjustment period, to result for each of those fiscal years from the 0.25-percent reduction in local sales and use rate tax authority applied by Section 7203.1. The director shall adjust the estimates described in this paragraph if the board reports to him or her any changes in the projected growth in local sales and use tax revenues for the current fiscal year.

(3) "In lieu local sales and use tax revenues" means those revenues that are transferred under this section to a county or a city from a Sales and Use Tax Compensation Fund or an Educational Revenue Augmentation Fund.

(c) Except as otherwise provided in subdivision (d), for each fiscal year during the fiscal adjustment period, in lieu sales and use tax revenues in the Sales and Use Tax Compensation Fund shall be allocated among the county and the cities in the county, and those allocations shall be subsequently adjusted, as follows:

(1) The Director of Finance shall, on or before September 1 of each fiscal year during the fiscal adjustment period, notify each county auditor of that portion of the countywide adjustment amount for that fiscal year that is attributable to the county and to each city within that county.

(2) The county auditor shall allocate revenues in the Sales and Use Tax Compensation Fund among the county and cities in the county in the amounts described in paragraph (1). The auditor shall allocate one-half of the amount described in paragraph (1) in each January during the fiscal adjustment period and shall allocate the balance of that amount in each May during the fiscal adjustment period.

(3) After the end of each fiscal year during the fiscal adjustment period, other than a fiscal year subject to subdivision (d), the Director of Finance shall, based on the actual amount of sales and use tax revenues that were

not transmitted for the prior fiscal year, recalculate each amount estimated under paragraph (1) and notify the county auditor of the recalculated amount.

(4) If the amount recalculated under paragraph (3) for the county or any city in the county is greater than the amount allocated to that local agency under paragraph (2), the county auditor shall, in the fiscal year next following the fiscal year for which the allocation was made, 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.

(5) If the amount recalculated under paragraph (3) for the county or any city in the county is less than the amount allocated to that local agency under paragraph (2), the county auditor shall, in the fiscal year next 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 Educational Revenue Augmentation Fund.

(6) If there is an insufficient amount of moneys in a county's Sales and Use Tax Compensation Fund to make the transfers required by paragraph (4), the county auditor shall transfer from the county Educational Revenue Augmentation Fund an amount sufficient to make the full amount of these transfers.

(d) (1) At such time as the Director of Finance estimates that the notification described in subparagraph (A) of paragraph (1) of subdivision (b) is likely to occur within the subsequent 12 months, the director shall, at the beginning of each subsequent calendar year quarter, determine the month in which the notification will occur.

(2) (A) In the calendar year quarter in which the Director of Finance determines that the notification described in subparagraph (A) of paragraph (1) of subdivision (b) will occur within either the current or subsequent quarter, the director shall revise the countywide adjustment amount described in subdivision (c) for the current fiscal year such that the countywide adjustment amount is calculated only through the quarter in which the director gives notification pursuant to subparagraph (A) of paragraph (1) of subdivision (b). The director, when appropriate, may revise the countywide adjustment amount described in subdivision (c) for the subsequent fiscal year such that the countywide adjustment amount described in subdivision (c) is calculated only through the quarter in which the director gives notification pursuant to subparagraph (A) of paragraph (1) of subdivision (b).

(B) If the determination regarding the notification described in subparagraph (A) is revised, the countywide adjustment amount calculated in subparagraph (A) for either the current or the subsequent fiscal year shall be recalculated such that the countywide adjustment amount described in subdivision (c) is calculated only through the quarter in which the Director of Finance gives notification pursuant to subparagraph (A) of paragraph (1) of subdivision (b).

(3) (A) After the end of the revenue exchange period, the Director of Finance shall do both of the following:

(i) Provide to the Controller, with a copy to the Joint Legislative Budget Committee, a schedule providing for a transfer from the Fiscal Recovery Fund, established pursuant to Section 99008 of the Government Code, to the Sales and Use Tax Compensation Fund of either of the following amounts:

(I) An amount equal to the local sales and use tax revenue not received by the county and each city in the county during the revenue exchange period as a result of the 0.25-percent reduction in local sales and use tax authority applied by Section 7203.1 minus the sum of all countywide adjustment amounts deposited during the revenue exchange period, as determined by the director. This amount shall be summed over all counties.

(II) If the amount summed over all counties in subclause (I) is greater than the difference between the balance in the Fiscal Recovery Fund and an amount sufficient to cover the estimated costs associated with closing the Fiscal Recovery Fund, then a proportion shall be calculated equal to the proportion between the amount in subclause (I) summed over all counties and an amount equal to the difference between the balance in the Fiscal Recovery Fund and an amount sufficient to cover the estimated costs associated with closing the Fiscal Recovery Fund. The amount calculated under this subclause is equal to the product of the amount calculated in subclause (I) and the proportion calculated in this subclause.

(ii) Provide a schedule to the auditor of each county of the amounts calculated under clause (i).

(B) If the amount provided for in the schedule required pursuant to clause (i) of subparagraph (A) is the amount that is described in subclause (II) of clause (i) of subparagraph (A), an amount equal to the difference between the amount that is described in subclause (I) of clause (i) of subparagraph (A) and the amount that is described in subclause (II) of clause (i) of subparagraph (A) shall constitute an additional countywide adjustment amount to be applied in the manner prescribed in subdivision (a) for either the current or subsequent fiscal year, as determined by the director.

(4) The Controller shall transfer, from the Fiscal Recovery Fund to the Sales and Use Tax Compensation Fund for each county, the amount specified for that county in the schedule provided by the Director of Finance pursuant to clause (i) of subparagraph (A) of paragraph (3).

(5) Within 60 days of the transfer by the Controller of revenues from the Fiscal Recovery Fund to the Sales and Use Tax Compensation Fund for each county, each county auditor shall allocate revenue to the county and each city in the county per the schedule provided by the Director of Finance pursuant to clause (ii) of subparagraph (A) of paragraph (3).

(6) For purposes of this subdivision, “revenue exchange period” has the same meaning as defined in subdivision (b) of Section 7203.1.

(e) For the 2005–06 fiscal year and each fiscal year 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.

(f) This section may not be construed to do any of the following:

(1) Reduce any allocations of excess, additional, or remaining funds that would otherwise have been allocated to cities, counties, cities and counties, or special districts pursuant to clause (i) of subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.2, clause (i) of subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.3, or Article 4 (commencing with Section 98), had this section not been enacted. The allocation made pursuant to subdivisions (a) and (c) shall be adjusted to comply with this paragraph.

(2) Require an increased ad valorem property tax revenue allocation to a community redevelopment agency.

(3) Alter the manner in which ad valorem property tax revenue growth from fiscal year to fiscal year is determined or allocated in a county.

(g) Existing tax exchange or revenue sharing agreements, entered into prior to the operative date of this section, between local agencies or between local agencies and nonlocal agencies shall be deemed to be temporarily modified to account for the reduced sales and use tax revenues, resulting from the temporary reduction in the local sales and use tax rate, with those reduced revenues to be replaced in kind by property tax revenue from a Sales and Use Tax Compensation Fund or an Educational Revenue Augmentation Fund, on a temporary basis, as provided by this section.

SEC. 4. Section 18032 is added to the Revenue and Taxation Code, to read:

18032. (a) If gain or loss from the exchange of property in this state of a taxpayer is not recognized under this part because of Section 1031 of the Internal Revenue Code, relating to exchange of property held for productive use or investment, for a taxable year and the property acquired in that exchange is located outside of this state, the taxpayer shall file an information return with the Franchise Tax Board for the taxable year of the exchange and for each subsequent taxable year in which the gain or loss from that exchange has not been recognized, in the form and manner prescribed by the Franchise Tax Board.

(b) If a taxpayer fails to file an information return required pursuant to subdivision (a), and fails to file a return required under Part 10.2 (commencing with Section 18401), the Franchise Tax Board may make an estimate of the net income, from any available information, including the amount of gain described in subdivision (a), and may propose to assess the amount of tax, interest, and penalties due in the same manner as Section 19087.

(c) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to this section.

(d) This section shall apply to exchanges of property that occur in taxable years beginning on or after January 1, 2014.

SEC. 5. Section 24953 is added to the Revenue and Taxation Code, to read:

24953. (a) If gain or loss from the exchange of property in this state of a taxpayer is not recognized under this part because of Section 1031 of the Internal Revenue Code, relating to exchange of property held for productive use or investment, for a taxable year and the property acquired in that exchange is located outside of this state, the taxpayer shall file an information return with the Franchise Tax Board for the taxable year of the exchange and for each subsequent taxable year in which the gain or loss from that exchange has not been recognized, in the form and manner prescribed by the Franchise Tax Board.

(b) If a taxpayer fails to file an information return required pursuant to subdivision (a), and fails to file a return required under Part 10.2 (commencing with Section 18401), the Franchise Tax Board may make an estimate of the net income, from any available information, including the amount of gain described in subdivision (a), and may propose to assess the amount of tax, interest, and penalties due in the same manner as Section 19087.

(c) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to this section.

(d) This section shall apply to exchanges of property that occur in taxable years beginning on or after January 1, 2014.

SEC. 6. Section 2 of Chapter 777 of the Statutes of 2012 is amended to read:

Sec. 2. The sum of fifty million dollars ($50,000,000), and the amount of moneys specified in subdivision (c), is hereby appropriated to the Department of Housing and Community Development as follows:

(a) Twenty-five million dollars ($25,000,000) from the Regional Planning, Housing, and Infill Incentive Account established pursuant to subdivision (b) of Section 53545 of the Health and Safety Code, for the purpose of funding infill incentive grants pursuant to Section 53545.13 of the Health and Safety Code.

(b) Twenty-five million dollars ($25,000,000) from the Transit-Oriented Development Implementation Fund established pursuant to subdivision (c) of Section 53545 of the Health and Safety Code, for the purpose of funding transit-oriented grants and loans pursuant to Part 13 (commencing with Section 53560) of Division 31 of the Health and Safety Code.

(c) (1) Any moneys allocated and appropriated pursuant to subdivision (b) of Section 53545 of the Health and Safety Code that become disencumbered and redeposited in the Regional Planning, Housing, and Infill Incentive Account during the 2012–13 and 2013–14 fiscal years, for the purpose of funding infill incentive grants pursuant to Section 53545.13 of the Health and Safety Code.

(2) Any moneys allocated and appropriated pursuant to subdivision (c) of Section 53545 of the Health and Safety Code that become disencumbered

and redeposited in the Transit-Oriented Development Account during the 2012–13 and 2013–14 fiscal years, for the purpose of funding transit-oriented grants and loans pursuant to Part 13 (commencing with Section 53560) of Division 31 of the Health and Safety Code.

SEC. 7. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

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