Hearing Date: May 30, 2014
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ITEM 4

TEST CLAIM
FINAL STAFF ANALYSIS

AND

PROPOSED STATEMENT OF DECISION

Health and Safety Code Section 34176

Statutes 2011, First Extraordinary Session, Chapter 5 (ABX1 26);
Statutes 2012, Chapter 26 (AB 1484)

Housing Successor Agency

12-TC-03

Stanton Housing Authority, Claimant

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

EXECUTIVE SUMMARY

Overview

This test claim alleges reimbursable state-mandated activities arising from the dissolution of the former Stanton Redevelopment Agency and the transfer of that agency's assets and obligations to the Stanton Housing Authority (Authority), pursuant to Health and Safety Code section 34176. Staff finds that the Stanton Housing Authority, like other housing authorities, enjoys an exemption from the taxing and spending restrictions of articles XIII A and B of the California Constitution and is therefore ineligible to claim mandate reimbursement.[1]

Procedural History

On June 28, 2013, the Authority filed this test claim. On July 8, 2013, Commission staff issued notice that the test claim filing was not complete, on grounds that the Authority had failed to establish that it was a local agency eligible to claim reimbursement before the Commission. On July 22, 2013, the Authority filed a rebuttal to Commission staff's notice, asserting that Commission staff did not have sufficient discretion and authority to determine its filing incomplete, that the Commission itself needs to decide the issue, and that it is an independent local agency established by statute and eligible to claim reimbursement, citing to Health and

[1] In its filings on the test claim, the Stanton Housing Authority failed to establish that it is an eligible claimant before the Commission. However, because it was not possible to determine conclusively whether the Authority is an eligible claimant without a full analysis of the issue of whether it is subject to the taxing and spending limitations of articles XIII A and B, the Commission takes jurisdiction to decide that issue.

Safety Code sections 34203 and 34240. On July 31, 2013, Commission staff issued a notice of complete test claim filing and schedule for comments, including a request for additional information regarding the Authority's status as an eligible claimant. On August 30, 2013, the State Controller's Office (Controller) notified the Commission that it had no comments on the test claim. Also on August 30, 2013, the Department of Finance (Finance) submitted comments on the test claim, and responded to Commission staff's request for additional information.

On January 31, 2014, Commission staff issued a draft staff analysis and proposed statement of decision. On February 18, 2014, Finance submitted comments concurring with the draft staff analysis. On February 19, 2014, the Authority requested an extension of time to file comments and postponement of the hearing, which was granted for good cause. On April 7, 2014, the Authority submitted comments on the draft staff analysis. Also on April 7, 2014, the Sacramento Housing and Redevelopment Agency (SHRA) 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.[2]

Claims

This analysis does not reach the merits of whether Health and Safety Code section 34176 imposes a new program or higher level of service. The Authority, like other housing authorities, is not eligible to claim mandate reimbursement pursuant to article XIII B, section 6 because it is not subject to the taxing and spending restrictions of articles XIII A and XIII B of the California Constitution.

Analysis

Article XIII B, section 6 requires reimbursement to local governments for increased costs mandated by the state. "Costs mandated by the state" is defined to mean "any increased costs which a local agency or school district is required to incur…as a result of any statute…or any executive order implementing any statute…which mandates a new program or higher level of service of an existing program."[3] "Local agency," in turn, is defined to include "any city,

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

[3] Government Code section 17514 (Stats. 1984, ch. 1459).

county, special district, authority, or other political subdivision of the state."[4] However, not every "local agency," as defined, is eligible to claim reimbursement pursuant to article XIII B, section 6. In addition to fitting the description above of a local agency, an entity must also be subject to the tax and spend limitations of articles XIII A and XIII B. As explained in the following analysis, a local agency that does not collect or expend the proceeds of taxes, as defined in the Constitution and interpreted by the courts, is not eligible to claim reimbursement under article XIII B, section 6. Because housing authorities have no authority to impose taxes and do not expend the proceeds of taxes, such agencies are not subject to the taxing and spending limitations of articles XIII A and XIII B. Therefore, because housing authorities are not subject to the taxing and spending limitations of articles XIII A and XIII B, they are not eligible claimants within the meaning of article XIII B, section 6.

A. Article XIII B, section 6 requires reimbursement only when the local government is subject to the tax and spend provisions of articles XIII A and XIII B of the California Constitution.

In 1978, the voters adopted Proposition 13, which drastically reduced property tax revenue previously enjoyed by local governments by setting the maximum amount of ad valorem property tax on real property at 1% of the full cash value of the property.[5] Article XIII B was adopted by the voters less than 18 months after the addition of article XIII A to the state Constitution, and was billed as "the next logical step to Proposition 13."[6] While article XIII A is aimed at controlling ad valorem property taxes and the imposition of new special taxes, "the thrust of article XIII B is toward placing certain limitations on the growth of appropriations at both the state and local government level; in particular, Article XIII B places limits on the authorization to expend the 'proceeds of taxes.'"[7]

Article XIII B established "an appropriations limit," or spending limit for each "local government" beginning in fiscal year 1980-1981.[8] No "appropriations subject to limitation" may be made in excess of the appropriations limit, and revenues received in excess of authorized appropriations must be returned to the taxpayers within the following two fiscal years.[9] Article XIII B does not limit the ability to expend government funds collected from *all sources*; the appropriations limit is based on "appropriations subject to limitation," which means, pursuant to article XIII B, section 8, "any authorization to expend during a fiscal year the proceeds of taxes levied by or for that entity."[10] Appropriations subject to limitation do not include "local agency

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[4] Government Code secton 17518 (Stats. 1984, ch. 1459).

[5] California Constitution, article XIII A, section 1 (effective June 7, 1978).

[6] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446 (*County of Placer*).

[7] *Ibid*.

[8] California Constitution, article XIII B, section 8(h) (effective Nov. 7, 1979).

[9] California Constitution, article XIII B, section 2 (effective Nov. 7, 1979).

[10] California Constitution, article XIII B, section 8 (effective Nov. 7, 1979; amended by Proposition 111, June 5, 1990).

loan funds or indebtedness funds,"[11] "investment (or authorizations to invest) funds…of an entity of local government in accounts at banks…or in liquid securities,"[12] "[a]ppropriations for debt service," "[a]ppropriations required to comply with mandates of the courts or the federal government," and "[a]ppropriations of any special district which existed on January 1, 1978 and which did not as of the 1977-78 fiscal year levy an ad valorem tax on property in excess of 12 [and one half] cents per $100 of assessed value; or the appropriations of any special district then existing or thereafter created by a vote of the people, which is totally funded by other than the proceeds of taxes."[13] "Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments."[14] Section 6 was therefore "intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task."[15]

Not every local agency is subject to the restrictions of article XIII B, and therefore not every local agency is entitled to reimbursement under section 6. Redevelopment agencies (RDAs), in particular, have been identified by the courts as being exempt from the restrictions of article XIII B. In *Bell Community Redevelopment Agency v. Woolsey*, the Second District Court of Appeal concluded that bonds issued by a redevelopment agency and repaid with tax increment revenues are not appropriations subject to limitation.[16] The court reasoned that to construe tax increment payments as appropriations subject to limitation "would be directly contrary to the mandate of section 7," which provides that "Nothing in this Article shall be construed to impair the ability of the state or of any local government to meet its obligations with respect to existing or future bonded indebtedness."[17] In addition, the court found that other provisions of article XIII B weighed against treating tax increment revenues as appropriations subject to limitation:

> Upon a reading of the complete text of article XIIIB we find further support for this holding. Article XIIIB governs "appropriations subject to limitation;" a redevelopment agency has no appropriation limit. Section 2 provides that revenues in excess of the appropriations limit be returned to the taxpayers; article XVI, section 16 and case law require that tax increments be returned to the taxing entity upon elimination of the debt. Section 4 calls for a vote of the "electors" of an entity to change an appropriations limit; dependence on such periodic approval for repayment would effectively negate the viability of a bond issuance. Section

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[11] California Constitution, article XIII B, section 8(i) (effective Nov. 7, 1979; amended by Proposition 111, June 5, 1990).

[12] *Ibid*.

[13] California Constitution, article XIII B, section 9 (effective Nov. 7, 1979; amended by Proposition 111, June 5, 1990).

[14] *County of Fresno*, *supra*, (1991) 53 Cal.3d 482, at p. 487.

[15] *Ibid*.

[16] (Cal. Ct. App. 2d Dist. 1985) 169 Cal.App.3d 24.

[17] Id., at p. 31 [quoting article XIII B, section 7].

> 9(a) expressly excludes debt service from "appropriations subject to limitations;" tax increments are exactly that.[18]

The court therefore concluded that redevelopment agencies could not reasonably be subject to article XIII B.

Accordingly, in *Redevelopment Agency of San Marcos v. Commission on State Mandates*,[19] the court held that redevelopment agencies were not eligible to claim reimbursement, because Health and Safety Code section 33678 exempted tax increment financing, their primary source of revenue, from the limitations of article XIII B.

> Because of the nature of the financing they receive, tax increment financing, redevelopment agencies are not subject to this type of appropriations limitations or spending caps; they do not expend any "proceeds of taxes." Nor do they raise, through tax increment financing, "general revenues for the local entity." The purpose for which state subvention of funds was created, to protect local agencies from having the state transfer its cost of government from itself to the local level, is therefore not brought into play when redevelopment agencies are required to allocate their tax increment financing in a particular manner...
>
> For all these reasons, we conclude the same policies which support exempting tax increment revenues from article XIII B appropriations limit also support denying reimbursement under section 6 … [The] costs of depositing tax increment revenues in the Housing Fund are attributable not directly to tax revenues, but to the benefit received by the Agency from the tax increment financing scheme, which is one step removed from other local agencies' collection of tax revenues.[20]

In 2000, the Third District Court of Appeal, in *City of El Monte v. Commission on State Mandates*, affirmed the reasoning of the *San Marcos* decision, holding that a redevelopment agency cannot accept the benefits of an exemption from article XIII B's spending limit while asserting an entitlement to reimbursement under article XIII B, section 6.[21]

Therefore, pursuant to *County of Fresno, supra*, *Redevelopment Agency of San Marcos, supra*, and *City of El Monte, supra*, a local agency that does not collect and expend "proceeds of taxes" is not subject to the tax and spend limitations of articles XIII A and B, does not enjoy the protection of article XIII B, *section 6*, and therefore is not entitled to claim reimbursement pursuant to article XIII B, section 6.

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[18] Id., at p. 32 [citing *Huntington Park Redevelopment Agency v. Martin* (1985) 38 Cal.3d 100, at p. 108].

[19] (Cal. Ct. App. 4th Dist. 1997) 55 Cal.App.4th 976

[20] *Redevelopment Agency of San Marcos, supra,* 55 Cal.App.4th at p. 986-987 [internal citations omitted].

[21] (2000) 83 Cal.App.4th 266, 281-282 (*El Monte*).

B. Housing Authorities do not have statutory authority to levy taxes, and their sources of revenue are not subject to the appropriations limit.

The Authority argues that it is an eligible claimant before the Commission, because it is a "local agency," as defined in section 17518.[22] However, Finance has asserted in its comments on the test claim, citing *Redevelopment Agency of San Marcos*, that the Authority is not an eligible claimant because "joint powers authorities are not eligible for mandate reimbursement."[23] While local housing authorities may be created as a joint powers authority, as discussed below, (like the Sacramento Housing and Redevelopment Agency[24]) there is no evidence that the Stanton Housing Authority is a joint powers authority. Nevertheless, the reasoning of *Redevelopment Agency of San Marcos* still holds with respect to the Authority, because like a joint powers authority, the Authority has no authority to levy taxes. In addition, like a redevelopment agency, the Authority has the power to issue bonds or finance its activities by other non-tax means. A housing authority funds its operations through bonds or other long-term financing mechanisms, including the financing of housing projects from which the authority may later collect rents.[25]

These funding sources are not proceeds of taxes, and therefore are not subject to the appropriations limit. Accordingly, housing authorities do not have statutory authority to levy taxes, and their sources of revenue are not subject to the appropriations limit. Thus, housing authorities are not subject to the tax and spend limitations of articles XIII A and B.

C. Nothing in the redevelopment dissolution statutes, or in any other statute or constitutional provision, alters the above analysis.

As the foregoing analysis explains, a housing authority is not eligible to claim reimbursement pursuant to article XIII B, section 6, because a housing authority generally does not collect or expend proceeds of taxes and its revenues are not subject to the spending limit. Nothing in the dissolution statutes alters the above analysis with respect to the activities claimed by the Authority. The activities and statutes pled are not and will not be funded with "appropriations subject to limitation," but rather must be funded, if at all, by the revenues of the housing authority which consist of "bonds, notes, warrants or other obligations required for the purpose of financing or refinancing the acquisition, construction, or completion of public improvements or projects or any rents…the proceeds of which are required for the payment of principal and interest…"[26]

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[22] Exhibit C, Claimant Response to Notice of Incomplete Test Claim Filing.

[23] Exhibit F, Department of Finance Comments on Test Claim, at p. 2.

[24] See http://www.shra.org/AboutUs.aspx (accessed April 28, 2014.)

[25] Health and Safety Code section 34312 (As amended, Stats. 2006, ch. 890); Health and Safety Code section 33641 (As amended, Stats. 1993, ch. 942). See also Revenue and Taxation Code section 7280.5 (Added, Stats. 1987, ch. 665); Health and Safety Code section 34312.3 (As amended, Stats. 2001, ch. 745).

[26] *County of Placer v. Corin* (1980) 113 Cal.App.3d at p. 453, fn. 8, quoting Government Code section 53715, which implemented article XIII B.

The Authority argues in its comments on the draft staff analysis that it does receive property taxes "and is therefore subject to Article XIII A and XIII B."[27] The Authority's arguments while persuasive at first glance, are not supported by the law or the facts.

The Authority relies on article XIII B, section 8(b-c),[28] which defines "appropriations subject to limitation" as "any authorization to expend…the proceeds of taxes levied by or for that entity…", and defines "proceeds of taxes" to "include, but not be restricted to, all tax revenues and the proceeds to an entity of government, from (1) regulatory licenses, user charges, and user fees to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service…"[29] The Authority asserts that Health and Safety Code section 34171(p) "allocates the proceeds of taxes to the Authority,"[30] implying that the allocation constitutes "proceeds of taxes levied *by or for* [the] entity."[31] But in *Bell Community Redevelopment Agency*, *supra*, the court explained that to levy taxes "for an entity" has special meaning in the law, which still requires the entity itself to have taxing power.[32] Therefore, even if the revenues that the Authority alleges are considered "proceeds of taxes," whether by virtue of being deemed property taxes, or being "converted" by way of fees or charges in excess of the reasonable costs of providing services, those revenues are not collected "by or for" the Authority, because the Authority has no statutory authority to collect or expend property taxes, as discussed above.

Moreover, nothing in the redevelopment dissolution statutes, either as added or as subsequently amended, establishes that the Authority receives *proceeds of taxes* which are subject to the taxing and spending limitations of articles XIII A and XIII B. Section 34171(p), on which the Authority relies, describes a limited amount of "property taxes" otherwise allocated to the Redevelopment Obligation Retirement Fund, which are now required to be allocated to the housing successor entity for "administrative costs."[33] However, all revenues of the former RDA are intended to be allocated to specific purposes, and in a specified order of priority, with remainder to be distributed as property taxes to the cities, counties, and school districts encompassing the former RDA, and not provided as "general revenues for the [housing] entity"[34] or other successor agency.

Accordingly, the uncodified portion of ABX1 26 upon which the Authority relies, when read in its full context, clearly provides that the tax increment that is "…deemed property tax revenues" upon dissolution of an RDA "will be *allocated first to successor agencies to make payments on*

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[27] Exhibit I, Claimant Comments on Draft Staff Analysis, at pp. 2-5.

[28] Exhibit I, Claimant Comments on Draft Staff Analysis, at p. 3.

[29] California Constitution, article XIII B, section 8(b-c). See also, Exhibit I, Claimant Comments on Draft Staff Analysis, at p. 3.

[30] Exhibit I, Claimant Comments on Draft Staff Analysis, at p. 3.

[31] California Constitution, article XIII B, section 8(b) [emphasis added].

[32] 169 Cal.App.3d at p. 32.

[33] Health and Safety Code section 34171(p) (as amended Stats. 2014, ch. 1 (AB 471)).

[34] *Placer v. Corin*, *supra*, 113 Cal.App.3d at p. 451.

the indebtedness incurred by the dissolved redevelopment agencies, with remaining balances allocated in accordance with applicable constitutional and statutory provisions."[35] Section 34182 gives effect to this uncodified text, as noted above. The Legislature's intent was to provide an order of priority for the use of the remaining funds for the sole purpose of winding-down the former RDAs, and not to provide "general revenues for the local entity."[36]

The Authority further argues the rent that it charges to "its users (tenants of affordable housing projects)" constitutes a user fee or charge, and "[b]ecause the only viable option for raising revenue to pay Section 34176 expenses is to increase user charges and fees, thereby exceeding the Authority's cost of providing the service (i.e., housing), this source of revenue also falls within the definition of "proceeds of taxes." However, this additional theory of eligibility for mandate reimbursement is not persuasive. First, there is reason to question the extent of the Authority's power to raise rents, given that the purpose of a housing authority's power and obligation to acquire or refinance property is to provide for affordable housing, especially for those of low income.[37] And furthermore, articles XIII C and XIII D, prohibit raising fees or charges beyond the amount required to provide a given regulation, product or service, and prohibit any increase in tax without voter approval. In addition, article XIII C expressly provides that "[a] charge imposed for entrance to or use of local government property, or the purchase, rental or lease of local government property" is not a tax. Therefore, rents are not taxes, and if user fees, or other charges were increased to the point that they "exceed the costs reasonably borne by that entity in providing the regulation, produce or service," thereby arguably falling within the definition of "proceeds of taxes" pursuant to article XIII B, section 8, such increases would be *prohibited* by articles XIII C and XIII D.

Based on the foregoing, staff finds that nothing in the dissolution statutes, or any other statutory or constitutional provision, renders the revenues of the former redevelopment agency "proceeds of taxes," for purposes of article XIII B. Therefore, housing authorities, including but not limited to the Authority, are not subject to the taxing and spending limitations of articles XIII A and XIII B, and not eligible for reimbursement.

Conclusion

Based on the foregoing discussion and analysis, staff recommends that the Commission deny this test claim, finding that housing authorities, including but not limited to the claimant, are not eligible to claim reimbursement under article XIII B, section 6.

Staff Recommendation

Staff recommends that the Commission adopt the proposed statement of decision to deny this test claim.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the statement of decision following the hearing.

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[35] Statutes 2011-2012, 1st Extraordinary Session, chapter 5 (ABX1 26), section 1(i)

[36] See *Placer v. Corin*, *supra*, 113 Cal.App.3d at p. 451.

[37] See Health and Safety Code section 34201 (Stats. 1951, ch. 710).

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Health and Safety Code section 34176 Statutes 2011, First Extraordinary Session, Chapter 5 (ABX1 26); Statutes 2012, Chapter 26 (AB 1484) Filed on June 28, 2013 By, Stanton Housing Authority, Claimant.	Case No.: 12-TC-03 *Housing Successor Agency* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted May 30, 2014*)

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on May 30, 2014. [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

This test claim alleges reimbursable state-mandated activities arising from the dissolution of the former Stanton Redevelopment Agency and the transfer of that agency's assets and obligations to the Stanton Housing Authority (Authority), pursuant to Health and Safety Code section 34176. The Commission finds that housing authorities are not claimants eligible to seek reimbursement pursuant to article XIII B, section 6, because they are not subject to the taxing and spending limitations of article XIII A and B of the California Constitution.[38]

[38] In its filings on the test claim, the Authority failed to establish that it is a claimant eligible to seek reimbursement pursuant to article XIII B, section 6 of the California Constitution. However, because it is not possible to determine conclusively whether the Authority is an eligible claimant without a full analysis of the issue of whether it is subject to the taxing and spending limitations of article XIII A and B, the Commission takes jurisdiction to decide that issue.

COMMISSION FINDINGS

I. Chronology

06/28/2013	The Authority filed this test claim.[39]
07/08/2013	Commission staff issued notice that the test claim filing was incomplete.[40]
07/22/2013	The Authority filed a rebuttal to Commission staff's notice.[41]
07/31/2013	Commission staff issued a notice of complete test claim filing and schedule for comments, including a request for additional information regarding the Authority's status as an eligible claimant.[42]
08/30/2013	The State Controller's Office (Controller) notified the Commission that it had no comments on the test claim.[43]
08/30/2013	The Department of Finance (Finance) submitted comments on the test claim, and responded to Commission staff's request for additional information.[44]
01/31/2014	Commission staff issued the draft staff analysis and proposed statement of decision.[45]
02/18/2014	Finance submitted comments on the draft staff analysis.[46]
02/19/2014	The Authority requested an extension of time to file comments and postponement of the hearing, which was granted for good cause.
04/07/2014	The Authority submitted comments on the draft staff analysis.[47]
04/07/2014	The Sacramento Housing and Redevelopment Agency (SHRA) submitted comments on the draft staff analysis.[48]

II. Introduction

Background and History of Redevelopment

After World War II, beginning in 1945, the Legislature authorized local agencies to create redevelopment agencies (RDAs) "in order to remediate urban decay."[49] These agencies were

[39] Exhibit A, Stanton Housing Authority Test Claim.

[40] Exhibit B, Notice of Incomplete Filing and Request for Additional Information.

[41] Exhibit C, Claimant Response to Notice of Incomplete Filing.

[42] Exhibit D, Notice of Complete Test Claim Filing and Request for Additional Information.

[43] Exhibit E, Controller's Comments on Test Claim Filing.

[44] Exhibit F, Finance Comments on Test Claim Filing.

[45] Exhibit G, Draft Staff Analysis.

[46] Exhibit H, Finance Comments on Draft Staff Analysis.

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

[48] Exhibit J, SHRA Comments on Draft Staff Analysis.

intended "to help local governments revitalize blighted communities," but have "since become a principal instrument of economic development, mostly for cities, with nearly 400 redevelopment agencies…active in California."[50] A redevelopment agency usually was "governed by the sponsoring community's own legislative body," and was authorized to improve, rehabilitate, and redevelop blighted areas.[51] The first step in doing so was to "declare an area to be blighted and in need of urban renewal." In the early years of redevelopment "few communities established redevelopment areas and most project areas were small – typically 10 acres (about six square city blocks) to 100 acres (an area about one-fifth of a square mile)."[52]

Within a project area, redevelopment agencies had power to acquire and dispose of real property, including by eminent domain, to clear land and construct infrastructure, and make other improvements to public facilities. Redevelopment agencies did not, however, have the power to levy taxes; instead, such agencies relied largely on tax increment financing, a scheme authorized by article XVI, section 16 of the California Constitution, and outlined in Health and Safety Code section 33670 et seq.[53] In a tax increment scheme, "those public entities entitled to receive property tax revenue in a redevelopment project area…are allocated a portion based on the assessed value of the property prior to the effective date of the redevelopment plan." Then, all remaining revenue "in excess of that amount – the *tax increment* created by the increased value of project area property – goes to the redevelopment agency for repayment of debt incurred to finance the project." In other words, "property taxes for entities other than the redevelopment agency are frozen, while revenue from any increase in value is awarded to the redevelopment agency on the theory that the increase is the result of redevelopment."[54] Tax increment revenues were permitted to be used "only to address urban blight in the community that established the RDA."[55]

Tax increment financing, though "a powerful and flexible tool for community economic development…has sometimes been misused to subsidize a city's economic development through the diversion of property tax revenues from other taxing entities." Such misuse "became more common in the era of constricted local tax revenue that followed the passage of Proposition 13."[56] The passage of Chapter 1406, Statutes of 1972 (SB 90, Dills) "created a system of school 'revenue limits,' whereby the state guarantees each school district an overall level of funding

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[49] *California Redevelopment Association v. Matosantos*, (*CRA v. Matosantos*) (2011) 53. Cal.4th 231, at p. 245 [citing Stats. 1945, ch. 1326, p. 2478; Stats. 1951, ch. 710, p. 1922]. See also, LAO Report: Unwinding Redevelopment, at p. 5.

[50] *CRA v. Matosantos*, at p. 246 [internal citations omitted].

[51] *Ibid*.

[52] Exhibit K, LAO Report: Unwinding Redevelopment, at p. 5.

[53] California Constitution, article XVI, section 16 (Adopted Nov. 4, 1974; amended Nov. 8, 1988); Health and Safety Code section 33670 et seq.

[54] *CRA v. Matosantos*, *supra*, at pp. 246-247.

[55] Exhibit K, LAO Report: Unwinding Redevelopment, at p. 8.

[56] *CRA v. Matosantos*, *supra*, at p. 247.

from local property taxes and state resources combined." Thus, the state committed itself to providing additional funds when school districts' local property taxes were redirected for redevelopment, and the local community could capture more property tax revenue while ensuring its schools were supported. Then, Proposition 13 in 1978 "significantly constrained local authority over the property tax and most other local revenue sources," but did not affect local authority over redevelopment revenues.[57]

As a result of restricted revenue authority and state guarantees of school funding, "cities (joined by a small number of counties) no longer limited their project areas to small sections of communities, but often adopted projects spanning hundreds or thousands of acres and frequently including large tracts of vacant land." As an extreme example, "[a]t least two cities placed all privately owned land in the city under redevelopment."[58] By fiscal year 2009-2010, "RDAs were receiving over $5 billion in property taxes annually – a redirection of 12 percent of property tax revenues from general purpose local government use for redevelopment purposes." This increasing diversion of property taxes over time placed a greater burden on the state's general fund to backfill K-14 school districts to meet minimum funding requirements.[59] In response to the unforgiving "shell game among local agencies" caused by restricted local revenues, the Legislature has at times required redevelopment agencies to transfer some of their tax increment revenue for other local government needs, including schools.[60] Such transfers have been, in the past, temporary, but even these temporary shifts were made more difficult by limitations placed on the Legislature's power to shift funds among local agencies by Proposition 1A (2004) and Proposition 22(2010).[61]

Background and History of Housing Authorities

The national program of public housing originated with the United States Housing Act of 1937,[62] which established a federal mechanism for funding "the development, acquisition, or administration of low-rent-housing or slum-clearance projects" by local housing agencies.[63] One year after passage of the federal Act, the California Legislature enacted the Housing Authorities

[57] Exhibit K, LAO Report: Unwinding Redevelopment, at pp. 5-7.

[58] *Ibid*.

[59] Exhibit K, LAO Report: Unwinding Redevelopment, at p. 8.

[60] *CRA v. Matosantos, supra*, 53 Cal.4th, at p. 247. See also, *Redevelopment Agency of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266.

[61] *Id*, at p. 249.

[62] Former Title 42 United States Code section 1401 et seq., now Title 42 United States Code section 1437 et seq.

[63] Former Title 42 United States Code section 1409. See generally Note, The New Leased Housing Program: How Tenantable a Proposition? (1975) 26 Hastings L.J. 1145, 1148–1157.

Law[64] establishing procedures for the development of public housing in the state and creating local housing authorities to receive and administer the newly available federal funds.[65]

Housing authorities are authorized, under the Health and Safety Code, to file suit and be sued; to make and execute contracts; to acquire, lease and operate housing projects for persons of low income; to provide for construction, reconstruction, improvement, alteration, or repair of all or any part of a housing project; to provide leased housing to persons of low income; to provide financing for acquisition, construction, rehabilitation, refinancing, or development of dwelling accommodations for persons of low income; to issue revenue bonds; to make or undertake commitments to make construction loans and mortgage loans; to lease or rent any dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project; to own, hold and improve real or personal property; to purchase, lease, or acquire by gift, grant, bequest, or devise, any real or personal property; to acquire property by eminent domain; and to sell or dispose of any real or personal property.[66] In addition, a housing authority may issue bonds "for any of its corporate purposes"; it may sell or otherwise dispose of mortgage loans; pledge revenues and receipts; mortgage, pledge, assign, or grant security interests in any mortgage loans, notes, loans made to lending institutions, or other property in favor of the holder or holders of bonds; pledge all or any part of its gross or net rents, fees, or revenues; mortgage all or any part of its real or personal property then owned or thereafter acquired; covenant against pledging all or part of its rents or other revenues; and covenant as to the use or maintenance of its real or personal property.[67] A housing authority does not have the power to levy taxes.[68]

Winding Down and Dissolution of Redevelopment

On December 6, 2010, and again on January 20, 2011, outgoing Governor Schwarzenegger, followed by incoming Governor Brown, recognized and declared a state fiscal emergency.[69] On June 29, 2011, the Legislature enacted amendments to the Community Redevelopment Law (Health and Safety Code section 33000, et seq.), that were "intended to stabilize school funding by *reducing or eliminating the diversion of property tax revenues* from school districts to the state's community redevelopment agencies."[70] Section 1 of Statutes 2011-2012, First Extraordinary Session, chapter 5 (ABX1 26) states, in pertinent part:

> (j) It is the intent of the Legislature to do all of the following in this act:

[64] Statutes 1938, Extra Session, chapter 4, p. 9.

[65] Health and Safety Code sections 34200–34402; see also *Davis v. City of Berkeley* (1988) 47 Cal.3d 512.

[66] Health and Safety Code sections 34311-34315.

[67] Health and Safety Code sections 34350; 34359; 34360; 34363.

[68] Health and Safety Code sections 34200-34380.

[69] *Id*, at p. 250; Legislative Counsel's Digest, paragraph 7 (Stats. 2011-2012, 1st Ex. Sess., ch. 5 (ABX1 26)).

[70] *CRA v. Matosantos*, *supra*, at p. 241 [emphasis added].

(1) Bar existing redevelopment agencies from incurring new obligations, prior to their dissolution.

(2) Allocate property tax revenues to successor agencies for making payments on indebtedness incurred by the redevelopment agency prior to its dissolution and *allocate remaining balances in accordance with applicable constitutional and statutory provisions*.

(3) Beginning October 1, 2011, allocate these funds according to the existing property tax allocation within each county to make the funds available for cities, counties, special districts, and school and community college districts.

(4) Require successor agencies to *expeditiously wind down the affairs of the dissolved redevelopment agencies* and to provide the successor agencies with limited authority that extends only to the extent needed to implement a winddown of redevelopment agency affairs.[71]

Accordingly, Part 1.8 of the amended Community Redevelopment Law freezes the operations of redevelopment agencies, prohibiting RDAs from incurring new bonds or other indebtedness, and from entering into new plans or partnerships, effective June 29, 2011. Part 1.85 then provides for the dissolution of the RDAs and transfer of their operations and functions to successor entities, in order to implement the winding down of redevelopment activities and the return of the tax increment to the taxing agencies (cities, counties, and school districts) from which the funds had been diverted previously.

Sections 34162 through 34165 state that as of the effective date of ABX1 26 (June 29, 2011), RDAs shall *not have authority* to, and *shall not*, among other things: issue or sell bonds; refund, restructure, or refinance indebtedness; make loans or advances; enter into contracts with or make commitments to any entity; dispose of assets by sale, lease, gift, grant, exchange, transfer, assignment, or otherwise; acquire real property by any means for any purpose; prepare, approve, adopt, amend, or merge a redevelopment plan; create, designate, merge, expand, or otherwise change the boundaries of a project area; enter into new partnerships; impose new assessments; provide optional or discretionary bonuses to any officers or employees; or begin any condemnation proceeding or begin the process to acquire real property by eminent domain.[72] Section 34167 expressly provides that "[n]othing in this part shall be construed to interfere with a redevelopment agency's authority, pursuant to enforceable obligations as defined in this chapter, to (1) make payments due, (2) enforce existing covenants and obligations, or (3) perform its obligations."[73] RDAs are permitted to continue making payments and performing existing obligations relating to projects or properties existing prior to the amendments "[u]ntil successor agencies are authorized pursuant to Part 1.85,"[74] but "Part 1.8's purpose is to preserve

[71] Statutes 2011-2012, 1st Extraordinary Session, chapter 5 (ABX1 26), section 1 [emphasis added].

[72] Health and Safety Code sections 34162-34165 (as added or amended by Stats. 2011-2012, 1st Ex. Sess., ch. 5 (ABX1 26); Stats. 2012, ch. 26 (AB 1484)).

[73] Health and Safety Code section 34167 (Stats. 2011-2012, 1st Ex. Sess., ch. 5 (ABX1 26))].

[74] Health and Safety Code section 34169 (Stats. 2011-2012, 1st Ex. Sess., ch. 5 (ABX1 26)).

redevelopment agency assets and revenues for use by 'local governments to fund core governmental services' such as fire protection, police, and schools."[75]

The dissolution of redevelopment agencies and the winding down of their operations is governed by Part 1.85, commencing with section 34170, which provides that unless otherwise specified, "all provisions of this part shall become operative on February 1, 2012."[76] Section 34172 provides that "[a]ll redevelopment agencies and redevelopment agency components of community development agencies…in existence on the effective date of this part are hereby dissolved and shall no longer exist as a public body, corporate or politic."[77] Sections 34173 and 34176 provide for two new entities that are charged with assuming the assets and responsibilities, and winding down the affairs of the former RDA: a successor agency, and a successor *housing* agency.

Section 34173 provides that "all *authority, rights, powers, duties, and obligations previously vested*" with the former RDA "are hereby vested in the successor agencies." The default successor agency is the city, county, city and county, or one or more of the entities forming a joint powers authority that created the RDA.[78] A city, county, or city and county, or the entities forming the joint powers authority that authorized the creation of each redevelopment agency, *may elect not to serve* as a successor agency, pursuant to section 34173, and if no local agency elects to serve as a successor agency, a public body, referred to as a "'designated local authority' shall be immediately formed…and shall be vested with all the powers and duties of a successor agency as described in this part."[79]

Among other duties, a successor agency is required, pursuant to section 34177, to continue to make payments due for and perform obligations required by enforceable obligations; remit unencumbered balances of RDA funds to the county for distribution to the taxing entities; dispose of assets and properties as directed by the oversight board; enforce all rights of the former RDA for the benefit of the taxing entities; expeditiously wind down the affairs of the former RDA; continue to oversee development of properties until the contracted work has been completed or the obligations of the former RDA can be transferred to other parties; and prepare a Recognized Obligation Payment Schedule projecting the dates and amounts of scheduled payments for each enforceable obligation "for the remainder of the time period during which the redevelopment agency would have been authorized to obligate property tax increment had the redevelopment agency not been dissolved."[80] Enforceable obligations are defined in section 34167 to include bonds and debt service; loans borrowed by the former RDA; payments required

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[75] *CRA v. Matosantos, supra*, at p. 251 [citing Health and Safety Code section 34167 (Stats. 2011-2012, 1st Ex. Sess., ch. 5 (ABX1 26))].

[76] Health and Safety Code section 34170 (Stats. 2011-2012, 1st Ex. Sess., ch. 5 (ABX1 26)) [operative date amended per *CRA v. Matosantos, supra* (2011) 53 Cal.4th 231].

[77] Health and Safety Code section 34172 (Stats. 2011-2012, 1st Ex. Sess., ch. 5 (ABX1 26)).

[78] Health and Safety Code section 34171 (as added by Stats. 2011-2012, 1st Ex. Sess., ch. 5 (ABX1 26)). See also, Exhibit K, Senate Floor Analysis, ABX1 26, dated June 14, 2011, at p. 3.

[79] Health and Safety Code section 34173 (as amended, Stats. 2012, ch. 26 (AB 1484)).

[80] Health and Safety Code section 34177 (as amended, Stats. 2012, ch. 26 (AB 1484)).

by the federal government, and preexisting obligations to the state or payments required to RDA employees; judgments or settlements; and any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy.[81]

Section 34176 provides for what the Legislative Analyst's Office calls a "successor *housing* agency."[82] Pursuant to section 34176, a city, county, or city and county "*may elect* to retain the *housing assets and functions previously performed* by the redevelopment agency," and in such case "all rights, powers, duties, obligations, *and housing assets*, as defined in [section 34176(e)], *excluding any amounts on deposit in the Low and Moderate Income Housing Fund* and *enforceable obligations retained by the successor agency*, shall be transferred to the city, county, or city and county."[83] However, section 34176 further provides that if the city or county "*does not elect* to retain the responsibility for performing housing functions previously performed by a redevelopment agency, all rights, powers, assets, duties, and *obligations associated with the housing activities* of the agency," as specified, shall be transferred to a local housing authority. If there is only one housing authority within the territorial jurisdiction of the former RDA, the transfer of responsibilities and assets is to that housing authority; if there is more than one, the city or county must select one; and if there is no local housing authority, the transfer is to the Department of Housing and Community Development.[84] Section 34176 further provides that the entity assuming the housing functions of the former RDA "shall submit to the Department of Finance by August 1, 2012, a list of all housing assets that contains an explanation of how the assets meet the criteria specified in subdivision (e)." "Housing assets" are defined in subdivision (e) to include any interest in real property; any funds encumbered by an enforceable obligation to build low or moderate income housing; any loans or grants receivable, any funds derived from rents or operation of housing properties; and repayments of loans or deferrals owed to the Low and Moderate Income Housing Fund.[85]

On January 10, 2012, the City Council of Stanton adopted Resolution 2012-03, which stated, in pertinent part, that the City Council "hereby affirmatively elects…to serve as the Successor Agency to the Stanton Redevelopment Agency," and that the City Council "hereby elects to have the City of Stanton and/or the Stanton Housing Authority assume all rights, powers, assets, liabilities, duties, and obligations associated with the housing activities of the Stanton Redevelopment Agency in accordance with Health and Safety Code Section 34176." The dissolution of the former RDAs and the transfer of assets and housing functions of former RDAs to the housing authorities is the subject of this test claim.

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[81] Health and Safety Code section 34167 (Stats. 2011-2012, 1st Ex. Sess., ch. 5 (ABX1 26)).

[82] Exhibit K, LAO Report: Unwinding Redevelopment, at p. 15.

[83] Health and Safety Code section 34176(a)(1) (added, Stats. 2011-2012, 1st Ex. Sess., ch. 5 (ABX1 26); amended, Stats. 2012, ch. 26 (AB 1484)).

[84] Health and Safety Code section 34176 (added, Stats. 2011-2012, 1st Ex. Sess., ch. 5 (ABX1 26); amended, Stats. 2012, ch. 26 (AB 1484)).

[85] *Ibid*.

III. Positions of the Parties[86]

A. Stanton Housing Authority Position

The Authority alleges that on January 10, 2012, "in accordance with Section 34176(b), the City of Stanton adopted Resolution No. 2012-03 requiring all 'rights, powers, assets, liabilities, duties and obligations' of the former Stanton Redevelopment Agency ('RDA') to be transferred to the Stanton Housing Authority." The Authority alleges that several properties were transferred and that the "obligations for completion of planned/ongoing projects and/or maintenance of these properties…far exceed any fee authority, or governmental funding, provided to the Authority." The Authority asserts that prior to the addition of Health and Safety Code section 34176, the Authority "did not have any responsibilities or obligations associated with former RDA properties," and that "[a]ll obligations of the Authority related to former RDA properties…are a new program or higher level of service imposed by ABX1 26 and AB 1484."

Specifically, the Authority alleges that the largest expense "consists of a low and moderate income housing project created by the former RDA and known as the 'Tina/Pacific project,'" and that the obligations and expenses associated with the Tina/Pacific Project total approximately $17 million.[87] The Authority alleges that the following activities and costs were transferred from the former Stanton RDA to the Authority:

a. Staff and consultant fees and costs associated with the completion of the Housing Asset Transfer Form ("HAT"), including costs related to the completion, submission and meet & confer with DOF, and implementation of the HAT.

b. $6,500,000 in replacement housing costs for 12 properties that were demolished by the former Stanton Redevelopment Agency.

c. $7,041,684 in replacement housing costs for the 13 properties to be demolished.

d. $519,600 for demolition [$390,000 for demolition of the 13 properties ($30,000 per property), +$129,600 for fencing ($21,600 per 6 month period).]

e. $1,629,000 in relocation expenses [$24,000 for relocation plan plus $1,605,000 in relocation costs] for the 13 properties previously purchased by the former Stanton Redevelopment Agency, in which the tenants have not yet been paid relocation costs.

f. $105,000 in consultant fees to assist with relocation of Tina/Pacific Project existing tenants.

g. Estimated $612,000 in staff time related to Tina/Pacific Project.

h. Estimated $596,400 in maintenance/utilities/miscellaneous expenses for all 25 Tina/Pacific Project properties.

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[86] The State Controller's Office submitted to the Commission a single page notice that it has no comment on this test claim. (Exhibit E, SCO Comments).

[87] Exhibit A, Test Claim, at pp. 4-5.

> Additionally, the HAT lists additional properties there were transferred from the former RDA to the Housing Authority, which will require costs associated with maintenance, utilities and staff time.[88]

The Authority alleges that these activities and costs are imposed by section 34176(b), which provides that if the city or county that created the RDA elects not to "retain the responsibility for performing housing functions previously performed by a redevelopment agency, all rights, powers, assets, duties, and obligations associated with the housing activities of the agency, *excluding enforceable obligations retained by the successor agency and any amounts in the Low and Moderate Income Housing Fund, shall be transferred*" to the local housing authority. The Authority submitted letters from Finance, which rejected enforceable obligations claimed by the city-as-successor-agency, as evidence that the obligations above are mandated on the Authority as housing successor, because the costs and activities are not "enforceable obligations retained by the successor agency."[89]

The Authority alleges that it receives approximately $48,000 per month in rent from the Tina/Pacific Project, and that no other state, federal, or nonlocal funds are available for this program.[90]

In response to Commission staff's initial notice of incomplete filing, the claimant responded that "[t]he Stanton Housing Authority is an independent public entity created by statute," and an eligible local government claimant pursuant to the definitions of "local agency" and "local government" found in Government Code section 17518 and article XIII B, section 8(d), respectively.[91]

The Authority continues, in its comments on the draft staff analysis, to stress its status as an eligible "local agency" under section 17518, and the inclusion of an "authority, or other political subdivision of or within the state" in the definition of "local government" in article XIII B, section 8(d).[92] In addition, the Authority maintains that "the Authority receives property taxes and is therefore subject to Article XIII A and XIII B," and that its revenue qualifies as "proceeds of taxes," and therefore reimbursement is required.[93] The Authority argues that the redevelopment dissolution statutes, and especially the most recent amendments to those statutes,[94] "converted" the tax increment revenues of the former Stanton Redevelopment Agency to "general property taxes, therefore falling outside the scope of Section 33678 and within the

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[88] Exhibit A, Test Claim, at p. 5.

[89] Exhibit A, Test Claim, at pp. 22-30.

[90] Exhibit A, Test Claim, at pp. 4-6.

[91] Exhibit C, Claimant Rebuttal Comments, at p. 1.

[92] Exhibit I, Claimant Comments on Draft Staff Analysis, at p. 2.

[93] *Id*, at pp. 2-3.

[94] Exhibit I, Claimant Comments on Draft Staff Analysis, at p. 3 [citing Health and Safety Code section 34171 (as amended, Stats. 2014, ch. 1 (AB 471)).

scope of article XIII B."[95] Finally, the Authority argues that section 34176(b) constitutes a new program or higher level of service "requiring state reimbursement."[96]

B. Sacramento Housing and Redevelopment Agency Position

SHRA asserts that pursuant to Health and Safety Code section 34176 it "was statutorily mandated to assume all rights, powers, assets, duties, and obligations associated with the housing activities of the former Redevelopment Agency of the City of Sacramento." (Emphasis added.) Similarly, SHRA asserts that pursuant to Health and Safety Code section 34176, it "was statutorily mandated to assume all rights, powers, assets, duties, and obligations associated with the housing activities of the former Redevelopment Agency of the *County* of Sacramento." (Emphasis added.)[97] The SHRA therefore concludes that it "qualifies as a claimant under the above referenced claim." The SHRA states that it "would like to state our concurrence with the comments submitted by the Stanton Housing Authority to the Commission on State Mandates on the above referenced claim."[98]

C. Department of Finance Position

Finance argues, in its comments on the test claim, that the claimant's eligibility to claim reimbursement has not been established, and that the resolution of the Stanton City Council "uses language making it unclear to whom the City of Stanton is assigning responsibility for housing functions formerly performed by the redevelopment agency." Finance argues, in addition, that the test claim should be denied regardless of "the claimant's nature." Finance argues that if the Stanton Housing Authority "is part of the City of Stanton, the claimant is not eligible for reimbursement of any possible costs mandated by the state because the City elected to retain the responsibility." Alternatively, Finance argues that "[i]f the Stanton Housing Authority is a joint powers authority, that too negates a reimbursable state mandate because joint powers authorities are not eligible for mandate reimbursement." And, Finance argues that "[i]f the claimant is some other form of local government generally eligible for mandate reimbursement, the costs of any alleged requirements are imposed on them by another local government, not the state," and "[s]uch a shift between local governments of any responsibilities and costs is not subject to mandate reimbursement." In addition, Finance argues that some of the activities alleged are optional, and some of the costs alleged are not tied to state-mandated activities, but represent a shift of costs from one local entity to another. Finally, Finance argues that "the claimant has at its disposal any revenue generated by the housing assets transferred to

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[95] *Id*, at p. 4. Note that section 33678 specifies that tax increment revenues are not proceeds of taxes.

[96] *Id*, at pp. 4-5.

[97] Note that SHRA is the joint powers housing and redevelopment authority for the City and County of Sacramento and was established on April 20, 1982. It is unclear whether the City and County actually have their own independent housing authorities (aside from the SHRA JPA). Nonetheless, two separate comments were submitted together in the same electronic submission on SHRA letterhead purporting to be from the Housing Authority of the *City* of Sacramento and the Housing Authority of the *County* of Sacramento, respectively.

[98] Exhibit J, SHRA Comments on Draft Staff Analysis.

the claimant, the right and power to choose to dispose of those assets, and the right and power to use any revenue generated from the sale of any assets to carry on the functions of the Housing Successor."[99]

Finance's comments on the draft staff analysis concur with the recommendation that the claim be denied because the claimant is not eligible to claim reimbursement under article XIII B, section 6 of the California Constitution.[100]

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."[101] Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] …"[102]

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

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.[103]
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.[104]

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[99] Exhibit F, Department of Finance Comments on Test Claim, at pp. 1-2.

[100] Exhibit H, Finance Comments on Draft Staff Analysis.

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

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

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

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.[105]

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.[106]

The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[107] 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.[108] 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."[109]

Article XIII B, section 6 requires reimbursement to local governments for increased costs mandated by the state. "Costs mandated by the state" is defined to mean "any increased costs which a local agency or school district is required to incur…as a result of any statute…or any executive order implementing any statute…which mandates a new program or higher level of service of an existing program."[110] "Local agency," in turn, is defined to include "any city, county, special district, authority, or other political subdivision of the state."[111] However, not every "local agency," as defined, is eligible to claim reimbursement pursuant to article XIII B, section 6. In addition to an entity fitting the description above, the entity must also be subject to the tax and spend limitations of articles XIII A and XIII B. As explained in the following analysis, an agency that does not collect or expend the proceeds of taxes, as defined in the Constitution and interpreted by the courts, is not eligible to claim reimbursement under article XIII B, section 6. Therefore, because housing authorities do not collect or expend the proceeds of taxes, such agencies are not eligible claimants before the Commission. Specifically, because the Stanton Housing Authority does not collect or expend the proceeds of taxes, it is not an eligible claimant within the meaning of article XIII B, section 6. Nothing in the redevelopment dissolution statutes, or in any other code section or constitutional provision, alters this analysis.

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

[105] *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.

[106] *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.

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

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

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

[110] Government Code section 17514 (Stats. 1984, ch. 1459).

[111] Government Code secton 17518 (Stats. 1984, ch. 1459).

A. Article XIII B, section 6 requires reimbursement only when the local government is subject to the tax and spend provisions of Articles XIII A and XIII B of the California Constitution.

An interpretation of article XIII B, section 6 requires an understanding of articles XIII A and XIII B. "Articles XIII A and XIII B work in tandem, together restricting California governments' power both to levy and to spend taxes for public purposes."[112]

In 1978, the voters adopted Proposition 13, which added article XIII A to the California Constitution. Article XIII A drastically reduced property tax revenue previously enjoyed by local governments by providing that "the maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value" and that the one percent (1%) tax was to be collected by counties and "apportioned according to law to the districts within the counties…"[113] In addition to limiting the property tax, section 4 also restricts a local government's ability to impose special taxes by requiring a two-thirds approval by voters.[114]

Article XIII B was adopted by the voters less than 18 months after the addition of article XIII A to the state Constitution, and was billed as "the next logical step to Proposition 13."[115] While article XIII A is aimed at controlling ad valorem property taxes and the imposition of new special taxes, "the thrust of article XIII B is toward placing certain limitations on the growth of appropriations at both the state and local government level; in particular, Article XIII B places limits on the authorization to expend the 'proceeds of taxes.'"[116]

Article XIII B established "an appropriations limit," or spending limit for each "local government" beginning in fiscal year 1980-1981.[117] Specifically, the appropriations limit provides as follows:

> The total annual appropriations subject to limitation of the State and of each local government shall not exceed the appropriations limit of the entity of government for the prior year adjusted for the change in the cost of living and the change in population, except as otherwise provided in this article.[118]

No "appropriations subject to limitation" may be made in excess of the appropriations limit, and revenues received in excess of authorized appropriations must be returned to the taxpayers within the following two fiscal years.[119] Article XIII B does not limit the ability to expend

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[112] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486 (*County of Fresno*).

[113] California Constitution, article XIII A, section 1 (effective June 7, 1978).

[114] California Constitution, article XIII A, section 4 (effective June 7, 1978).

[115] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446 (*County of Placer*).

[116] *Ibid.*

[117] California Constitution, article XIII B, section 8(h) (effective Nov. 7, 1979).

[118] California Constitution, article XIII B, section 1 (effective Nov. 7, 1979; amended by Proposition 111, June 5, 1990).

[119] California Constitution, article XIII B, section 2 (effective Nov. 7, 1979).

government funds collected from *all sources*; the appropriations limit is based on "appropriations subject to limitation," which means, pursuant to article XIII B, section 8, "any authorization to expend during a fiscal year the proceeds of taxes levied by or for that entity."[120] Appropriations subject to limitation do not include "local agency loan funds or indebtedness funds,"[121] "investment (or authorizations to invest) funds…of an entity of local government in accounts at banks…or in liquid securities,"[122] "[a]ppropriations for debt service," "[a]ppropriations required to comply with mandates of the courts or the federal government," and "[a]ppropriations of any special district which existed on January 1, 1978 and which did not as of the 1977-78 fiscal year levy an ad valorem tax on property in excess of 12 [and one half] cents per $100 of assessed value; or the appropriations of any special district then existing or thereafter created by a vote of the people, which is totally funded by other than the proceeds of taxes."[123]

Article XIII B, section 6 was added also as a part of Proposition 4, to provide reimbursement to local governments for any additional revenue-limited expenditures that might be required. The California Supreme Court, in *County of Fresno v. State of California*,[124] explained:

> Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles I, supra*, 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6.) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the "state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service," read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues*.[125]

Not every local agency is subject to the restrictions of article XIII B, and therefore not every local agency is entitled to reimbursement. Redevelopment agencies, in particular, have been identified by the courts as being exempt from the restrictions of article XIII B. As discussed above, redevelopment agencies relied primarily, prior to their dissolution, on a funding scheme described as tax increment financing. In a tax increment scheme, property values that normally

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[120] California Constitution, article XIII B, section 8 (effective Nov. 7, 1979; amended by Proposition 111, June 5, 1990).

[121] California Constitution, article XIII B, section 8(i) (effective Nov. 7, 1979; amended by Proposition 111, June 5, 1990).

[122] *Ibid.*

[123] California Constitution, article XIII B, section 9 (effective Nov. 7, 1979; amended by Proposition 111, June 5, 1990).

[124] *County of Fresno, supra*, (1991) 53 Cal.3d 482.

[125] *Id*, at p. 487. Emphasis in original.

provide the tax base for school districts, cities, and counties within a redevelopment project area are "frozen" at the time the redevelopment plan is adopted. Thereafter, the tax due on any increase in property values, theoretically attributable to the efforts of the redevelopment agency, is collected by the county and passed on to the agency to repay bonds issued for redevelopment activities. This financing scheme is laid out in Health and Safety Code section 33670 et seq., and section 33678 expressly provides that tax increment financing shall not be considered proceed of taxes for purposes of article XIII B. Specifically, section 33678 provides, in pertinent part:

> This section implements and fulfills the intent of this article and of Article XIII B and Section 16 of Article XVI of the California Constitution. The allocation and payment to an agency of the portion of taxes specified in subdivision (b) of Section 33670 for the purpose of paying principal of, or interest on, loans, advances, or indebtedness incurred for redevelopment activity, as defined in subdivision (b) of this section, shall not be deemed the receipt by an agency of proceeds of taxes levied by or on behalf of the agency within the meaning or for the purposes of Article XIII B of the California Constitution, nor shall such portion of taxes be deemed receipt of proceeds of taxes by, or an appropriation subject to limitation of, any other public body within the meaning or for purposes of Article XIII B of the California Constitution or any statutory provision enacted in implementation of Article XIII B. [126]

In *Bell Community Redevelopment Agency v. Woolsey*, the Second District Court of Appeal concluded that section 33678 is consistent with the Constitution, and that bonds issued by a redevelopment agency and repaid with tax increment revenues are not appropriations subject to limitation.[127] *Bell Community Redevelopment Agency* was not a mandate reimbursement case, but dealt more generally with the applicability of the appropriations limit. In that case, the agency had previously adopted a redevelopment plan for a given project area, and "concluded all necessary steps to issue [$3 million in] allocation bonds" to fund the project. Woolsey, the agency secretary, refused to publish notice inviting bids on the bonds to be issued, reasoning that section 33678 was unconstitutional, and that "the Agency and the City Council had acted beyond their powers because the debt service on the proposed bond issue constituted an appropriation in excess of that allowed by article XIII B." Woolsey concluded that "this proposed notice committed him to appropriate and expend 'proceeds of taxes' without regard to the appropriations limitations imposed by article XIII B."[128] The agency's petition to compel Woolsey to publish the notice was denied in the superior court. On appeal, the Second District concluded that a redevelopment agency's power to issue bonds, and to repay those bonds with its tax increment, was not subject to the spending limit of article XIII B. The court reasoned that to construe tax increment payments as appropriations subject to limitation "would be directly contrary to the mandate of section 7," which provides that "Nothing in this Article shall be construed to impair the ability of the state or of any local government to meet its obligations with

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[126] Health and Safety Code section 33678 (Stats. 1980, ch. 1342, p. 4750; Stats. 1993, ch. 942 (AB 1290)).

[127] (Cal. Ct. App. 2d Dist. 1985) 169 Cal.App.3d 24.

[128] *Id*., at p. 29.

respect to existing or future bonded indebtedness."[129] In addition, the court found that other provisions of the article XIII B weighed against treating tax increment revenues as appropriations subject to limitation:

> Upon a reading of the complete text of article XIIIB we find further support for this holding. Article XIIIB governs "appropriations subject to limitation;" a redevelopment agency has no appropriation limit. Section 2 provides that revenues in excess of the appropriations limit be returned to the taxpayers; article XVI, section 16 and case law require that tax increments be returned to the taxing entity upon elimination of the debt. Section 4 calls for a vote of the "electors" of an entity to change an appropriations limit; dependence on such periodic approval for repayment would effectively negate the viability of a bond issuance. Section 9(a) expressly excludes debt service from "appropriations subject to limitations"; tax increments are exactly that.[130]

In addition, the court found that article XVI, section 16, addressing the funding of redevelopment agencies, was inconsistent with the limitations of article XIII B:

> Article XVI, section 16, provides that tax increment revenues "may be irrevocably pledged" to the payment of tax allocation bonds. If bonds must annually compete for payment within an annual appropriations limit, and their payment depend upon complying with the such limit, it is clear that tax allocation proceeds cannot be irrevocably pledged to the payment of the bonds. Annual bond payments would be contingent upon factors extraneous to the pledge. That is, bond payments would be revocable every year of their life to the extent that they conflicted with an annual appropriation limit. The untoward effect would be that bonds would become unsaleable because a purchaser could not depend upon the agency having a sure source of payment for such bonds.[131]

The court therefore concluded that redevelopment agencies could not reasonably be subject to article XIII B, and therefore upheld Health and Safety Code section 33678, and ordered that the writ issue to compel Woolsey to publish the notice.

Accordingly, in *Redevelopment Agency of San Marcos v. Commission on State Mandates*,[132] the court held that redevelopment agencies were not eligible to claim reimbursement, because Health and Safety Code section 33678 exempted tax increment financing, their primary source of revenue, from the limitations of article XIII B.

> Because of the nature of the financing they receive, tax increment financing, redevelopment agencies are not subject to this type of appropriations limitations or spending caps; they do not expend any "proceeds of taxes." Nor do they raise,

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[129] *Id*., at p. 31 [quoting article XIII B, section 7].

[130] *Id*., at p. 32 [citing *Huntington Park Redevelopment Agency v. Martin* (1985) 38 Cal.3d 100, at p. 108].

[131] *Id*, at p. 31.

[132] (Cal. Ct. App. 4th Dist. 1997) 55 Cal.App.4th 976.

> through tax increment financing, "general revenues for the local entity." The purpose for which state subvention of funds was created, to protect local agencies from having the state transfer its cost of government from itself to the local level, is therefore not brought into play when redevelopment agencies are required to allocate their tax increment financing in a particular manner...
>
> For all these reasons, we conclude the same policies which support exempting tax increment revenues from article XIII B appropriations limit also support denying reimbursement under section 6 … [The] costs of depositing tax increment revenues in the Housing Fund are attributable not directly to tax revenues, but to the benefit received by the Agency from the tax increment financing scheme, which is one step removed from other local agencies' collection of tax revenues.[133]

In 2000, the Third District Court of Appeal, in *City of El Monte v. Commission on State Mandates,* affirmed the reasoning of the *San Marcos* decision, holding that a redevelopment agency cannot accept the benefits of an exemption from article XIII B's spending limit while asserting an entitlement to reimbursement under article XIII B, section 6.[134]

Therefore, pursuant to *County of Fresno*, *supra*, *Redevelopment Agency of San Marcos*, *supra*, and *City of El Monte*, *supra*, a local agency that does not collect and expend "proceeds of taxes" is not subject to the tax and spend limitations of articles XIII A and B, does not enjoy the protection of article XIII B, *section 6,* and therefore is not entitled to claim reimbursement pursuant to article XIII B, section 6.

B. Housing Authorities do not have statutory authority to levy taxes, and their sources of revenue are not subject to the appropriations limit.

The Authority argues that it is an eligible claimant before the Commission, as follows:

> The Stanton Housing Authority is an independent public entity created by statute. (See Health & Saf. Code §§ 34203, 34240 [a housing authority is a public body, corporate and politic].) Pursuant to California Constitution, Article XIIIB, Section 8(d), "local government" for purposes of Article XIIIB of the California Constitution means "any city, county, city and county, school district, special district, authority, or other political subdivision of or within the state." (Emphasis added.) Government Code Section 17518 reiterates this definition by providing that a "local agency means any city, county, special district, authority, or other political subdivision of the state." (Emphasis added.) Under the definitions set forth in the California Constitution and Government Code Section 17518, the Authority is an eligible claimant.[135]

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[133] *Redevelopment Agency of San Marcos*, *supra*, 55 Cal.App.4th at p. 986-987 [internal citations omitted].

[134] (2000) 83 Cal.App.4th 266, 281-282 (*El Monte*).

[135] Exhibit C, Claimant Response to Notice of Incomplete Test Claim Filing.

Finance has asserted in its comments on the test claim, citing *Redevelopment Agency of San Marcos*, that the Authority is not an eligible claimant because "joint powers authorities are not eligible for mandate reimbursement."[136] While local housing authorities may be created as a joint powers authority, as discussed below (SHRA was formed on April 20, 1982 under a joint powers agreement[137]), there is no evidence that the Stanton Housing Authority is a joint powers authority; its area of operation appears to be limited to the City of Stanton, and its governing body is made up of the members of the City Council of Stanton only, and not representatives from any other city or county.[138] Nevertheless, the reasoning of *Redevelopment Agency of San Marcos* still holds, because like a joint powers authority, the Authority has no authority to levy taxes. In addition, like a redevelopment agency, the Authority has the power to issue bonds or finance its activities by other means: a housing authority, pursuant to Health and Safety Code sections discussed herein, funds its operations through bonds or other long-term financing mechanisms; sources of revenue that are not subject to the spending limit of article XIII B.

Statutory authorization for the creation and powers of local housing authorities is found in Part 2 of Division 24 of the Health and Safety Code, commencing at section 34200, which provides that "[t]his chapter [sections 34200 to 34380, inclusive] may be cited as the Housing Authorities Law." Section 34240 of the Housing Authorities Law provides as follows:

> In each county and city there is a public body corporate and politic known as the housing authority of the county or city. The authority shall not transact any business or exercise its powers unless, by resolution, the governing body of the county or city declares that there is a need for an authority to function in it.[139]

Section 34240.1 provides that the governing body of any city or county may enter into an agreement with any other city or county whose governing body has declared by resolution the need for a housing authority, and may form an area housing authority empowered by section 34247 to operate within all cities or counties joining in the agreement; in such case two commissioners may be appointed by the governing body of each member city or county pursuant to section 34246.[140] Sections 34310 to 34334, inclusive, describe the powers and duties of local housing authorities, which include the power to sue and be sued, to make and execute contracts, and to make and amend by-laws and regulations consistent with the Health and Safety Code.[141] In addition, within its area of operation, a housing authority has the power to "acquire, lease, and operate housing projects for persons of low income," to "[p]rovide for the construction, reconstruction, improvement, alteration, or repair of all or any part of any housing project," and to "[p]rovide leased housing to persons of low income."[142] These activities overlap the powers

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[136] Exhibit F, Department of Finance Comments on Test Claim, at p. 2.

[137] See http://www.shra.org/AboutUs.aspx (accessed April 28, 2014).

[138] See, e.g., Exhibit K, Stanton Housing Authority Meeting Minutes, January 14, 2014.

[139] Health and Safety Code section 34240 (Stats. 1951, ch. 710).

[140] Health and Safety Code section 34240.1; 34246; 34247 (Stats. 1951, ch. 710).

[141] Health and Safety Code section 343110 (Stats. 1951, ch. 710).

[142] Health and Safety Code section 34312 (As amended, Stats. 2006, ch. 890).

and duties of redevelopment agencies to some extent: Section 33391 provides for a redevelopment agency's power to acquire property within a project area,[143] and section 33400 permits a redevelopment agency to "[r]ent, maintain, manage, operate, repair and clear such property."[144]

More importantly, both redevelopment agencies and housing authorities have the power to issue bonds to finance their activities. Section 33640 provides that a redevelopment agency may issue bonds "for any of its corporate purposes," which may be repaid from any, or a combination of, the following: the income and revenues of the redevelopment projects financed with those bonds; tax increment financing; "transient occupancy tax" revenues pursuant to a duly adopted ordinance; or any contributions or financial assistance from the state or federal government.[145] A housing authority, pursuant to section 34312.3, may "[i]ssue revenue bonds for the purpose of financing the acquisition, construction, rehabilitation, refinancing, or development of multifamily rental housing and for the provision of capital improvements in connection with and determined necessary to the multifamily rental housing." A housing authority is also authorized to make or purchase construction loans and mortgage loans "to finance the acquisition, construction, rehabilitation, refinancing, or development of multifamily rental housing."[146]

Therefore, while a housing authority is a local entity with a local sphere of influence and responsibility, the relevant code sections provide that its authority to raise revenues for its funding is restricted to the issuance of bonds or other non-tax financing mechanisms. These funding sources are not proceeds of taxes, and therefore are not subject to the appropriations limit. In *County of Placer v. Corin*, *supra*, the Court of Appeal discussed the applicability of article XIII B as being based on "appropriations subject to limitation," which consists of the authorization to expend during a fiscal year the "proceeds of taxes."[147] "As to local governments, limits are placed only on the authorization to expend the proceeds of taxes *levied by that entity* …"[148] In addition, "'proceeds of taxes' generally contemplates only those impositions which raise general tax revenues for the entity."[149] "Proceeds of taxes" do not include "the proceeds from the sale of bonds, notes, warrants or other obligations required for the purpose of financing or refinancing the acquisition, construction, or completion of public improvements or projects or any rents, charges, assessments, or levies, other than tax levies, made pursuant to law, the proceeds of which are required for the payment of principal and interest, or to otherwise secure such obligations, and to pay the costs and expenses associated

[143] Health and Safety Code section 33391 (As amended, Stats. 1988, ch. 1599).

[144] Health and Safety Code section 33400 (As amended, Stats. 1965, ch. 1665).

[145] Health and Safety Code section 33641 (As amended, Stats. 1993, ch. 942). See also Revenue and Taxation Code section 7280.5 (Added, Stats. 1987, ch. 665).

[146] Health and Safety Code section 34312.3 (As amended, Stats. 2001, ch. 745).

[147] 113 Cal.App.3d at p. 447.

[148] *Ibid.* [emphasis added].

[149] *Id*., at p. 451.

therewith."[150] A housing authority's funding mechanisms consist of "bonds, notes, warrants or other obligations required for the purpose of financing or refinancing the acquisition, construction, or completion of public improvements or projects or any rents…the proceeds of which are required for the payment of principal and interest…"[151]

Moreover, for the same reasons that a redevelopment agency's financing tools were held in *Bell Community Redevelopment Agency v. Woolsey*, *supra*, to fall outside the appropriations limit of article XIII B, a housing authority's power to issue bonds or engage in other types of financing to acquire, construct, rehabilitate, refinance, or develop multifamily rental housing for low-income persons is not limited by the restrictions in article XIII B. In particular, the court in *Bell Community Redevelopment Agency* noted that "Section 9(a) expressly excludes debt service from "appropriations subject to limitations," and that section 7 expressly provides that "[n]othing in this Article shall be construed to impair the ability of the State or of any local government to meet its obligations with respect to existing or future bonded indebtedness." In addition, the court explained that "[article XIII B, s]ection 4 calls for a vote of the 'electors' of an entity to change an appropriations limit; dependence on such periodic approval for repayment would effectively negate the viability of a bond issuance."[152] Likewise, "dependence on such period approval for repayment would effectively negate the viability" of any long-term mortgage solutions or other financing scheme that a housing authority is authorized to undertake. The court thus concluded: "If bonds must annually compete for payment within an annual appropriations limit, and their payment depend upon complying with the such limit…[t]he untoward effect would be that bonds would become unsaleable because a purchaser could not depend upon the agency having a sure source of payment for such bonds."[153]

Accordingly, housing authorities do not have statutory authority to levy taxes, and their sources of revenue are not subject to the appropriations limit. Thus, housing authorities are not subject to the tax and spend limitations of articles XIII A and B.

C. Nothing in the redevelopment dissolution statutes, or in any other statute or constitutional provision, alters the above analysis.

The Authority has alleged costs relating to the Tina-Pacific Project, which consists of some 25 properties acquired by the former Stanton RDA and intended for demolition and redevelopment. Pursuant to the enactment of the test claim statutes, the "obligations associated with the housing activities" of a former RDA are transferred to a successor housing agency, which is, pursuant to the statute, either the city or county that created the RDA, or, if no city or county elects to serve as the successor housing agency, the local housing authority. As the foregoing analysis explains,

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[150] *Id*., at p. 453, fn. 8, quoting Government Code section 53715, which implemented article XIII B. See also, *County of Fresno*, *supra*, 53 Cal.3d 482, 487.

[151] *County of Placer v. Corin*, *supra*, 113 Cal.App.3d at p. 453, fn. 8, quoting Government Code section 53715, which implemented article XIII B.

[152] *Bell Community Redevelopment Agency*, *supra*, 169 Cal.App.3d, at pp. 31-32 [quoting California Constitution, article XIII B, sections 4, 7, 9, as added or amended by Proposition 4, November 6, 1979, Proposition 111, June 5, 1990].

[153] *Id*., at p. 31.

a housing authority is not eligible to claim reimbursement pursuant to article XIII B, section 6, because a housing authority does not collect or expend proceeds of taxes and its revenues are not subject to the spending limit. Nothing in the dissolution statutes alters the above analysis with respect to the activities of a housing authority. The activities and statutes pled in this test claim are not and will not be funded with "appropriations subject to limitation," but rather must be funded, if at all, by the revenues of the housing authority which consist of "bonds, notes, warrants or other obligations required for the purpose of financing or refinancing the acquisition, construction, or completion of public improvements or projects or any rents…the proceeds of which are required for the payment of principal and interest…"[154]

However, the Authority argues, in its comments on the draft staff analysis, that it does receive property taxes "and is therefore subject to Article XIII A and XIII B."[155] The Authority's arguments have surface appeal, but are not supported by the law or facts.

The Authority first relies on article XIII B, section 8(b-c),[156] as follows:

> Article XIII B, Section 8(b) of the California Constitution defines "appropriations subject to limitation" of a local government to mean "any authorization to expend during a fiscal year the proceeds of taxes levied by or for that entity and the proceeds of state subventions to that entity (other than subventions made pursuant to Section 6) exclusive of refunds of taxes."
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> The "proceeds of taxes" is thereinafter defined to "include, but not be restricted to, all tax revenues and the proceeds to an entity of government, from (1) regulatory licenses, user charges, and user fees to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service, and (2) the investment of tax revenues. With respect to any local government, 'proceeds of taxes' shall include subventions received from the state ..." (Cal. Const. Art. XIII B, §8(c).)
>
> The Staff Analysis provides that "because housing authorities do not collect or expend the proceeds of taxes, such agencies are not eligible claimants before the [CSM]. Specifically, because the Stanton Housing Authority does not collect or expend the proceeds of taxes, it is not an eligible claimant within the meaning of Article XIII B, Section 6." (Staff Analysis, p.17 .) We believe this is incorrect.[157]

The Authority asserts that Health and Safety Code section 34171(p) "allocates the proceeds of taxes to the Authority,"[158] implying that the allocation constitutes "proceeds of taxes levied *by or for* [the] entity."[159] The Authority further maintains that section 34171(p) "clearly recognizes

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[154] *County of Placer v. Corin* (1980) 113 Cal.App.3d at p. 453, fn. 8, quoting Government Code section 53715, which implemented article XIII B.

[155] Exhibit I, Claimant Comments on Draft Staff Analysis, at pp. 2-5.

[156] Exhibit I, Claimant Comments on Draft Staff Analysis, at p. 3.

[157] *Ibid*.

[158] Exhibit I, Claimant Comments on Draft Staff Analysis, at p. 3.

[159] California Constitution, article XIII B, section 8(b) [emphasis added].

that if a local housing authority assumed the housing functions of the former redevelopment agency, these activities should be paid for with property taxes, and require [*sic*] the Authority to expend the proceeds of taxes."[160] The Authority also cites the uncodified language of ABX1 26, which "provides that '[t]he Legislature finds and declares all of the following…(i) Upon [the redevelopment agency's] dissolution, any property taxes that would have been allocated to redevelopment agencies will no longer be deemed tax increment. Instead those taxes will be deemed property tax revenues…" The Authority concludes that "[t]he legislative intent is clear," and that "the Authority receives property taxes under Section 34171(p), not tax increments, to pay for its costs as a housing successor under Section 34176."[161]

However, in *Bell Community Redevelopment Agency*, *supra*, the court explained that to levy taxes "for an entity" has special meaning in the law, which still requires the entity itself to have taxing power:

> The phrase "to levy taxes by or for an entity" has a special meaning of long-standing. The concept of one entity levying taxes for another dates back to at least 1895 (Stats. 1895, p. 219) and the adoption of an act providing for the levy of taxes "by or for" municipal corporations. This act allowed general law and charter cities to continue to exercise their taxing power directly or, if they so desired, to have the county levy and collect their taxes for them. (*Griggs v. Hartzoke* (1910) 13 Cal.App. 429, 430-432; *County of Los Angeles v. Superior Court* (1941) 17 Cal.2d 707, 710-711.) The legal effect of this arrangement, as explained by case law, was that the taxing power exercised was that of the city, and it remained in the city. The county officers in levying taxes for the city became ex-officio officers of the city and exercised the city's taxing power. (*Madary v. City of Fresno* (1912) 20 Cal.App. 91, 93-94.) In levying taxes for the city the county was levying "municipal taxes" through the ordinary county machinery. (*Griggs*, *supra.*, at p. 432.)
>
> Thus, the salient characteristics of one entity levying taxes "for" another entity are: (1) the entity for whom the taxes are levied has the taxing power; (2) the levying officers of the county exercise the taxing power of the entity for whom they are levying; (3) they exercise such power as ex-officio officers of that entity, and (4) the taxes collected are those of the "levied for" entity. It is obvious that none of these characteristics has any applicability to the redevelopment process as set forth in article XVI, section 16.[162]

Therefore, even if the revenues that the Authority alleges are considered "proceeds of taxes," whether by virtue of being deemed property taxes, or being "converted" by way of fees or charges in excess of the reasonable costs of providing services, those revenues are not collected "by or for" the Authority, because the Authority has no statutory authority to collect or expend property taxes, as discussed above.

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[160] Exhibit I, Claimant Comments on Draft Staff Analysis, at p. 3.

[161] Exhibit I, Claimant Comments on Draft Staff Analysis, at p. 4.

[162] 169 Cal.App.3d at p. 32.

Moreover, nothing in the redevelopment dissolution statutes, either as added or as subsequently amended, establishes that the Authority receives *proceeds of taxes* which are subject to the taxing and spending limitations of articles XIII A and XIII B. The Authority implies that the use of the words "property tax" in the redevelopment dissolution statutes renders the Authority subject to the tax and spend limitations of articles XIII A and XIII B, and therefore an eligible claimant under article XIII B, section 6. But each example that the Authority cites is expressly limited to certain purposes, and not "general revenues for the local entity."[163] Section 34171(p), on which the Authority relies, describes a limited amount of "property taxes" otherwise allocated to the Redevelopment Obligation Retirement Fund, which are now required to be allocated to the housing successor entity for "administrative costs."[164] "Administrative costs" are not specifically defined in section 34171(p), but with respect to the "[a]dministrative cost allowance" provided to a successor agency (as opposed to a successor housing agency), section 34171(b) provides that "[a]dministrative cost allowances *shall exclude* any litigation expenses related to assets or obligations, settlements and judgments, and the costs of maintaining assets prior to disposition…" and "[e]mployee costs associated with work on specific project implementation activities, including, but not limited to, construction inspection, project management, or actual construction, shall be considered project-specific costs and *shall not constitute administrative costs*."[165] Therefore the "property taxes" allocated by section 34171(p) are limited in scope and purpose.

In addition, subdivision (p) was added by Statutes 2014, chapter 1 (AB 471), effective February 18, 2014, and is therefore not inherently instructive as to legislative intent with respect to the dissolution of redevelopment agencies enacted nearly three years prior.[166] Indeed the Legislative Counsel's Digest preceding Statutes 2014, chapter 1 (AB 471) describes the existing law requiring counties to allocate funds in the Redevelopment Property Tax Trust Fund for passthrough payment obligations, enforceable obligations of a former RDA, and administrative costs, and states that "[t]his bill would require that, under specified conditions, on July 1, 2014, and twice yearly thereafter until July 1, 2018, funds be allocated to cover the housing entity administrative cost allowance of a local housing authority that has assumed the housing duties of the former [RDA]..."[167] Therefore the amendment to section 34171 is envisioned as a change to existing law, and should not be interpreted as clarifying or relied upon as evidence of the intent of the Legislature with respect to the earlier dissolution statutes.

Furthermore, the "property tax" revenues that are allocated to the Redevelopment Obligation Retirement Fund, from which a housing entity administrative cost allowance is drawn, are similarly circumscribed in their permissible uses: the purpose of these funds is to retire the obligations of the former RDA, after which the revenues will be reallocated to the counties, cites, and school districts from which the tax increment had been diverted. In other words, even

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[163] *Placer v. Corin*, *supra*, 113 Cal.App.3d at p. 451.

[164] Health and Safety Code section 34171(p) (as amended Stats. 2014, ch. 1 (AB 471)).

[165] Health and Safety Code section 34171(b) (as amended Stats. 2012, ch. 3 (AB 1413)).

[166] See *Union League Club v. Johnson* (1941) 18 Cal.2d 275 [presumption that when there is a new enactment, the Legislature intended to change the existing law].

[167] Statutes 2014, chapter 1 (AB 471).

though these revenues are termed "property taxes," the moneys in the Redevelopment Obligation Retirement Fund are not "general revenues for the local entity."[168] Health and Safety Code section 34182 provides, in pertinent part:

> (c)(1) The county auditor-controller shall determine the amount *of property taxes that would have been allocated to each redevelopment agency* in the county had the redevelopment agency not been dissolved pursuant to the operation of the act adding this part. These amounts are *deemed property tax revenues within the meaning of subdivision (a) of Section 1 of Article XIII A of the California Constitution and are available for allocation and distribution in accordance with the provisions of the act adding this part.* The county auditor-controller shall calculate the property tax revenues using current assessed values on the last equalized roll on August 20, pursuant to Section 2052 of the Revenue and Taxation Code, and pursuant to statutory formulas or contractual agreements with other taxing entities, as of the effective date of this section, and shall deposit that amount in the Redevelopment Property Tax Trust Fund.
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> (2) Each county auditor-controller shall administer the Redevelopment Property Tax Trust Fund *for the benefit of the holders of former redevelopment agency enforceable obligations and the taxing entities that receive passthrough payments and distributions of property taxes pursuant to this part.*
>
> (3) In connection with the allocation and distribution by the county auditor-controller of property tax revenues deposited in the Redevelopment Property Tax Trust Fund, in compliance with this part, the county auditor-controller shall prepare estimates of amounts of property tax to be allocated and distributed and the amounts of passthrough payments to be made in the upcoming six-month period, and provide those estimates to both the entities receiving the distributions and the Department of Finance, no later than October 1 and April 1 of each year.
>
> (4) Each county auditor-controller shall *disburse proceeds of asset sales or reserve balances*, which have been received from the successor entities pursuant to Sections 34177 and 34187, *to the taxing entities*. In making such a distribution, the county auditor-controller shall utilize the same methodology for allocation and distribution of property tax revenues provided in Section 34188.[169]

And, Health and Safety Code section 34172 provides for a former RDA's tax increment to be allocated for payments of principal and interest on indebtedness, with the remainder to be returned to the taxing entities, as follows:

> Revenues equivalent to those that would have been allocated pursuant to subdivision (b) of Section 16 of Article XVI of the California Constitution shall be allocated to the Redevelopment Property Tax Trust Fund of each successor agency for making payments on the principal of and interest on loans, and moneys advanced to or indebtedness incurred by the dissolved redevelopment agencies.

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[168] *Placer v. Corin*, *supra*, 113 Cal.App 3d 443, at p. 451.

[169] Health and Safety Code section 34182 (as amended Stats. 2012, ch. 26 (AB 1484)).

> Amounts in excess of those necessary to pay obligations of the former redevelopment agency *shall be deemed to be property tax revenues within the meaning of subdivision (a) of Section 1 of Article XIII A* of the California Constitution.[170]

The California Supreme Court, in *CRA v. Matosantos*, *supra*, interprets the requirements of the dissolution statutes similarly:

> Finally, tax increment revenues that would have gone to redevelopment agencies must be deposited in a local trust fund each county is required to create and administer. All amounts necessary to satisfy administrative costs, pass-through payments, and enforceable obligations will be allocated for those purposes, while *any excess will be deemed property tax revenue* and distributed in the same fashion as balances and assets.[171]

Therefore, although the Health and Safety Code employs the phrase "deemed property tax revenues," it is clear that all revenues of the former RDA are intended to be allocated to specific purposes, and in a specified order of priority, with remainder to be distributed as property taxes to the cities, counties, and school districts encompassing the former RDA, and not provided as "general revenues for the [housing] entity"[172] or other successor agency.

Accordingly, the uncodified portion of ABX1 26 upon which the Authority relies, when read in its full context, clearly provides that the tax increment that is "…deemed property tax revenues" upon dissolution of an RDA "will be *allocated first to successor agencies to make payments on the indebtedness incurred by the dissolved redevelopment agencies*, with remaining balances allocated in accordance with applicable constitutional and statutory provisions."[173] Section 34182 gives effect to this uncodified text, as noted above. The Authority's quotation of this language, repeated above, ends with "deemed property tax revenues," and therefore fails to acknowledge that the Legislature's intent was to provide an order of priority for the use of those funds for the sole purpose of winding-down the former RDAs, and not to provide "general revenues for the local entity."[174]

The Authority further argues the rent that it charges to "its users (tenants of affordable housing projects)" constitutes a user fee or charge, and "[b]ecause the only viable option for raising revenue to pay Section 34176 expenses is to increase user charges and fees, thereby exceeding the Authority's cost of providing the service (i.e., housing), this source of revenue also falls within the definition of 'proceeds of taxes.'"[175] This theory of eligibility relies on a particular

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[170] Health and Safety Code section 34172 (as added, Stats. 2010-2011, 1st Ex. Sess., ch. 5 (ABX1 26)) [emphasis added].

[171] 53 Cal.4th at p. 251 [emphasis added] [citing Health and Safety Code sections 34170.5; 35182; 34172; 34183].

[172] *Placer v. Corin*, *supra*, 113 Cal.App.3d at p. 451.

[173] Statutes 2011-2012, 1st Extraordinary Session, chapter 5 (ABX1 26), section 1(i)

[174] See *Placer v. Corin*, *supra*, 113 Cal.App.3d at p. 451.

[175] Exhibit I, Claimant Comments on Draft Staff Analysis, at p. 4.

interpretation of article XIII B, section 8(c), which states that proceeds of taxes include "the proceeds to an entity of government, from (1) regulatory licenses, user charges, and user fees to the extent that those proceeds *exceed* the costs reasonably borne by that entity in providing the regulation, product, or service…"[176] However, this ignores the plain language of article XIII C, section 1(e)(4) of the California Constitution which provides:

> (e) As used in this article, "tax" means any levy, charge, or exaction of any kind imposed by a local government, except the following: …
>
> (4) A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.

Additionally, there is reason to question the extent of the Authority's power to increase rents. Rent charges imposed by a housing authority, at least for that percentage of rental units that are reserved for low and moderate income tenants, are limited by the Housing Authorities Law.[177] Moreover, the entire purpose of allowing housing authorities, and formerly redevelopment agencies, to acquire property, or to finance or refinance the acquisition of property, is so that it can be rehabilitated and safe and sanitary dwelling accommodations can be made available "at rents which persons of low income can afford…"[178] The Legislature's intent in authorizing housing authorities and redevelopment agencies was to promote safe and affordable housing;[179] not to guarantee a stream of revenue for the agencies themselves (or for the counties or cities encompassing them).

Furthermore, Proposition 218 expressly forbids raising fees or charges beyond that necessary to provide the service in question. The Authority alleges, as noted above, that if it is compelled to raise rents (which it characterizes as a user charge or fee), those increased proceeds will exceed the costs reasonably borne to provide the service, and thus constitute proceeds of taxes under section 8. However, article XIII D, section 6 states that a fee or charge "*shall not be extended, imposed, or increased by any agency*…" if the revenues derived from the fee or charge exceed the funds required to provide the property related service.[180] In addition, article XIII C requires that "[N]o local government may impose, extend, or increase *any general tax* unless and until that tax is submitted to the electorate and approved by a majority vote."[181] For these purposes, article XIII C defines a tax broadly to include "any levy, charge, or exaction of any kind imposed by local government, except…" a charge imposed for a specific benefit or specific government

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[176] California Constitution, article XIII B, section 8(c) (as amended by Proposition 111, June 5, 1990).

[177] Health and Safety Code sections 34312; 34312.3 (as amended by, Stats. 2001, ch. 745; Stats. 2006, ch. 890).

[178] See Health and Safety Code section 34201 (Stats. 1951, ch. 710).

[179] *Ibid*.

[180] California Constitution, article XIII D, section 6 (added by Proposition 218, November 5, 1996).

[181] California Constitution, article XIII C, section 2 (added by Proposition 218, November 5, 1996).

service "which does not exceed the reasonable costs to the local government" of providing the service or conferring the benefit; or "[a]ssessments and property-related fees imposed in accordance with the provisions of Article XIII D."[182] Therefore, if user fees or charges were increased to the point that they "exceed the costs reasonably borne by that entity in providing the regulation, produce or service," thereby falling within the definition of "proceeds of taxes" pursuant to article XIII B, section 8, such increases would be prohibited by articles XIII C and XIII D. In other words, user fees and charges cannot be raised, pursuant to Proposition 218, in a manner that would constitute proceeds of taxes, because any increase in taxes would require voter approval.

Based on the foregoing, the Commission finds that nothing in the dissolution statutes, or any other statutory or constitutional provision, renders the revenues of the former redevelopment agency "proceeds of taxes," for purposes of article XIII B. Therefore, the Authority is not subject to the taxing and spending limitations of articles XIII A and XIII B, and is not eligible for reimbursement.

V. Conclusion

Based on the foregoing discussion and analysis, the Commission denies this test claim, finding that the claimant is not eligible to claim reimbursement under article XIII B, section 6.

[182] California Constitution, article XIII C, section 1 (added by Proposition 218, November 5, 1996).