

Memorandum

TO: East Contra Costa Fire Protection District Board of Directors
Hugh Henderson, Fire Chief

FROM: Shayna M. van Hoften, Legal Counsel
Samir Abdelnour

DATE: April 29, 2016

RE: Legal Analysis of Proposal to Receive Property Tax Revenue Transfers from Other Agencies in the ECCFPD Service Area

At its April 4, 2016 regular meeting, the East Contra Costa Fire Protection District (District) Board of Directors requested Legal Counsel to prepare an analysis of the legality of a property tax transfer proposal presented by Mr. Harold Bray on behalf of a local citizens group calling itself East County Voters for Equal Protection (ECV).

In sum, we conclude that the proposed voluntary property tax transfers from other agencies to the District, as presented, would violate Revenue and Taxation Code section 99.02, absent a change in the law.

I. Background

East Contra Costa Fire Protection District serves approximately 110,000 residents in an area covering 249 square miles. The District receives 7.5% of the property tax revenue generated within its boundaries – also stated as “7 cents of each tax dollar” – as compared to the other fire protection agencies in the County receiving 12 to over 30 cents per property tax dollar collected in their jurisdictions.

The District’s current revenues allow it to operate three fire stations and fund operation of the CalFire Sunshine station during non-fire season, down from nine stations in 2010. In June 2012, voters in the District rejected a ballot measure to enact a \$197 parcel tax for a total of \$4.2 million in additional funds to allow District operation of six stations. Then, in April 2015, property owners in the District rejected a proposed benefit assessment that would have funded District operation of five stations.

In recognition of the District’s structural financial crisis, and resulting inability to provide sufficient fire and medical emergency response services, a multi-jurisdictional taskforce was convened to address the problem. As a result, in November 2015, the City of Brentwood, the City of Oakley, and Contra Costa County adopted resolutions to enter into a Memorandum of Understanding (MOU) with each other and the District to provide funding to the District totaling approximately \$2.2 million over two fiscal years to allow the District to re-open and operate a fourth station

Memorandum To:
East Contra Costa Fire Protection District Board of Directors
Hugh Henderson, Fire Chief
April 29, 2016
Page 2

through June 30, 2017, and to allow the taskforce members to engage outside expertise to assist with developing long-term funding solutions for the District, including through extensive public engagement. Long-term options may include increasing local taxes or assessments to create dedicated funding for fire protection and fire and medical emergency response in East Contra Costa County.

II. ECV Proposal

ECV has proposed a plan to raise \$7.8 million in additional revenue to the District through the voluntary transfer of property tax revenues from other public agencies (the "Plan"). ECV's Plan calls for all public entities within the District's boundaries to agree to transfer 5.2% of their property tax revenues to the District for 3 fiscal years or budget cycles. According to ECV, the Plan would generate sufficient revenue to allow the District to operate six fire stations, without raising taxes on District residents.

Law concerning property tax transfers

Under Revenue and Taxation Code section 99.02 (Section 99.02), a public agency may "transfer any portion of its property tax revenues that is allocable to one or more tax rate areas within the local agency to one or more other local agencies having the same tax rate area or tax rate areas." (Rev. & Tax. C. § 99.02(b).) However, there are four enumerated limitations on property tax transfers under Section 99.02, which require the transferring agency to make the following determinations:

- (1) that revenues are available for the transfer;
 - (2) that the transfer will not increase the ratio between the transferring agency's revenues generated by regulatory licenses, use charges, user fees, or assessments and revenues used to finance services provided by the transferring agency;
 - (3) that the transfer will not impair the transferring agency's ability to provide existing services; and
 - (4) that property tax revenues to school entities will not be reduced.
- (Rev. & Tax. C. § 99.02(f).)

This means that the transferring agency, as a precursor to agreeing to the transfer, must declare that the lost property tax will not result in service cuts or in increased use charges, fees or assessments to offset the contemplated property tax transfer.

Legal concerns with ECV's short-term proposal

ECV's proposal presents significant legal concerns.

ECV's presentation materials regarding the Plan call for "equal participation by all public entities" in the property tax funding re-allocation proposal, including school districts. However, under current law, school districts would need to be excluded from the Plan to avoid running afoul of the limitation on transfers in Section 99.02(f)(4).

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Memorandum To:
East Contra Costa Fire Protection District Board of Directors
Hugh Henderson, Fire Chief
April 29, 2016
Page 3

Furthermore, the remaining transferring agencies would have to comply with Section 99.02(f)(1)-(3). To that point, ECV's presentation materials suggest that public agencies can "agree to simulate property tax allocation locally through a MOU or JPA," citing as examples the resolutions passed by Brentwood, Oakley and Contra Costa County in November 2015 to provide the District with additional funding. However, those resolutions were not adopted under Section 99.02, and did not require compliance with Section 99.02(f), which creates a significant hurdle.

In fact, Contra Costa County authorized its share of the short-term funding to the District to come from "back-owed SB90 reimbursement," which is a payment by the State to reimburse a local agency for the cost of a state-mandated new program or higher level of service, subject to certain exceptions. (Cal. Const. Art. 13B, § 6; Gov. C. § 17550 *et seq.*) Unlike under Section 99.02, agencies have "complete discretion in the expenditure of funds received" under SB90. (*Kinlaw v. State of California*, 54 Cal.3d 326, 335 (1991); Gov. C. § 17563.) The cities' contributions under the taskforce MOU are coming from one-time revenues from Community Facilities Districts, also not subject to Section 99.02.

Thus, to the extent ECV proposes that agencies "simulate property tax allocation" in a manner that does not require compliance with Section 99.02 – as Brentwood, Oakley, and Contra Costa County did with their one-time allocations – ECV's Plan fails to identify potential alternative sources of revenue, other than property tax revenues, available to agencies to transfer to the District at their discretion.

Requirements for ECV's long-term transfer or re-allocation proposal

ECV characterizes the bulk of its plan as temporary, but it states the initial elements would be a first step. ECV's presentation materials suggest that approval of the Plan will demonstrate a willingness for affected agencies to address the District's funding issues on their own, thereby making it more likely that the State legislature will approve a re-allocation to benefit the District in the future. Legislative re-allocation of property tax revenues at the State level, which may or may not result in a larger share for the District, would require a two-thirds majority of both houses of the State legislature. (Cal. Const. art. XIII, § 25.5(a)(3).) A change to Section 99.02 would require simple majority approval in the legislature. However, as with legislative re-allocation of property tax revenues, a modification of Section 99.02 would not necessarily result in lowering the hurdles for agencies to transfer property tax revenues to the District. Moreover, at this time, no legislation re-allocating property tax revenues or modifying Section 99.02 has been proposed.

If you have further questions or legal concerns regarding the ECV Plan or related matters, please contact Shayna at 415-995-5880 or svanhofthen@hansonbridgett.com.