

Public Works Officers Institute ❖ March 9, 2023

What Today's Public Works Professionals Need to Know About Municipal Finance

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The California Local Government Finance Almanac



Local Streets and Roads Revenues



Local Streets and Roads Revenues



Local \$ to HUTA

Str&Hwy2103
Previously price-based
Gasoline Excise Tax
reset to @17.3¢ on 7/1/19

Now 21.3 ¢

*inflation adjusted
annually July 1*

Str&Hwy2104-2108
Base rate
**Gasoline
Excise Tax** 18¢

Now 22.1 ¢

*inflation adjusted
annually July 1*

Local \$ to RMRA & grants

**Gasoline
Excise Tax** +12¢

Now 14.8 ¢

*inflation adjusted
annually July 1*

**Transportation
Improvement Fee**
\$25 to \$175/year
depending on auto value

Now \$29-206

*inflation adjusted
annually January 1*

**Diesel
Excise Tax**
+20¢/gal

Now 24.6 ¢

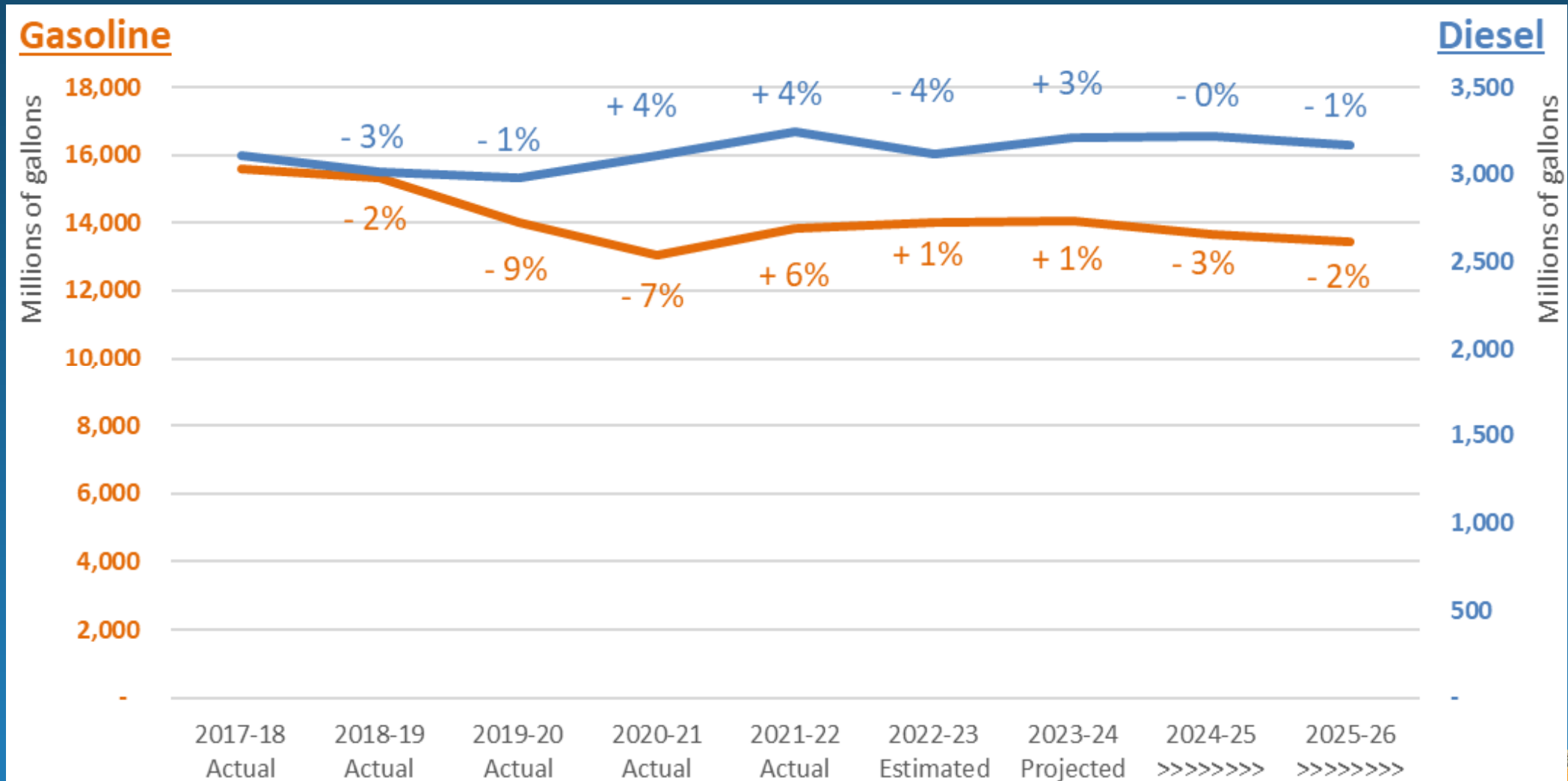
*inflation adjusted
annually July 1*

*inflation adjusted
annually July 1*

ZEV Registration Fee
\$108/yr on 2020 models / later

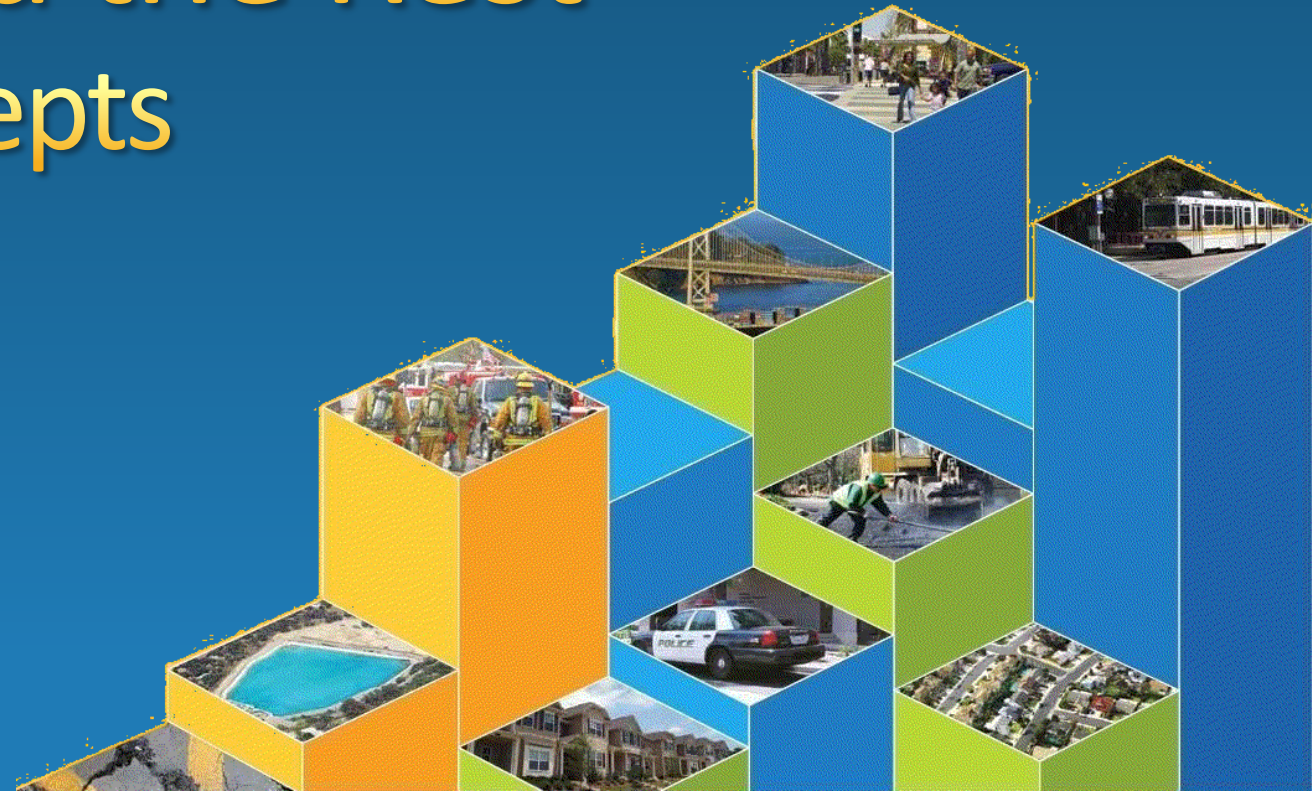


Fuel Consumption



Taxes, Fees and the Rest

Key Concepts



Cities Vary ... Counties Vary ... Special Districts Vary ... *and so do their finances*

- ✓ Geography: proximity, climate, terrain, access
- ✓ Community Character / Vision: Land use
Bedroom? Industrial? Tourist? Rural? etc.
- ✓ Size – urban / rural
- ✓ Governance / service responsibilities
full service city - vs.- *not* full service city
- ✓ Counties – amount of urban development in unincorporated areas

❖ Statewide generalizations often mask trends among sub-groups



Taxes

- ✓ Charges which pay for public services, facilities that provide general benefits. No need for direct relationship between a taxpayer's benefit and tax paid.
- ✓ Cities may impose any tax not otherwise prohibited by state law.
(Gov Code § 37100.5)
- ✓ The state has reserved a number of taxes for its own purposes including:
cigarette taxes, alcohol taxes, personal income taxes.
- ✓ **General & Special**
 - General Tax** - revenues may be used for any purpose.
Majority voter approval required for new or increased local tax
 - Special Tax** - revenues must be used for a specific purpose.
2/3 voter approval required for new or increased local tax
Parcel tax - requires 2/3 vote



Fees and the Rest

California Constitution per
Prop218(1996), Prop26(2010), etc.

Any levy, charge or exaction of any kind imposed by a local government, is a tax except:

✓ **User Fees: for a privilege/benefit, service/product ***

Planning permits, street closure permits, parking permits, user fees, copying fees, recreation classes

✓ **Regulatory Fees: regulation, permits, inspections ***

Permits for regulated commercial activities (e.g., dance hall, bingo, card room, check cashing, taxi, massage parlor, firearm dealers, etc.); fire, health, environmental, safety permits; pet licenses; bicycles

✓ **Rents: charge for entrance, use or rental of government property**

Facility/room rental fees, room rental fees, equipment rental fees, on and off-street parking, tolls, franchise, park entrance, museum admission, zoo admission, tipping fees, golf green fees, etc.

✓ **Penalties for illegal activity, etc.**

Parking fines, late payment fees, interest charges and other charges for violation of the law.

✓ **Charges imposed as a condition of property development**

Construction permits, development impact fees, etc.

✓ **Assessments and property related fees** imposed per Cal Const Article XIII D. (Prop218)

✓ **A payment that is not "imposed by a local government"**

Includes payments made by voluntary contract/ agreement not otherwise "imposed" by a government.

* Fee may not exceed reasonable costs.
♦ Service/product/benefit may not be provided to those not charged.



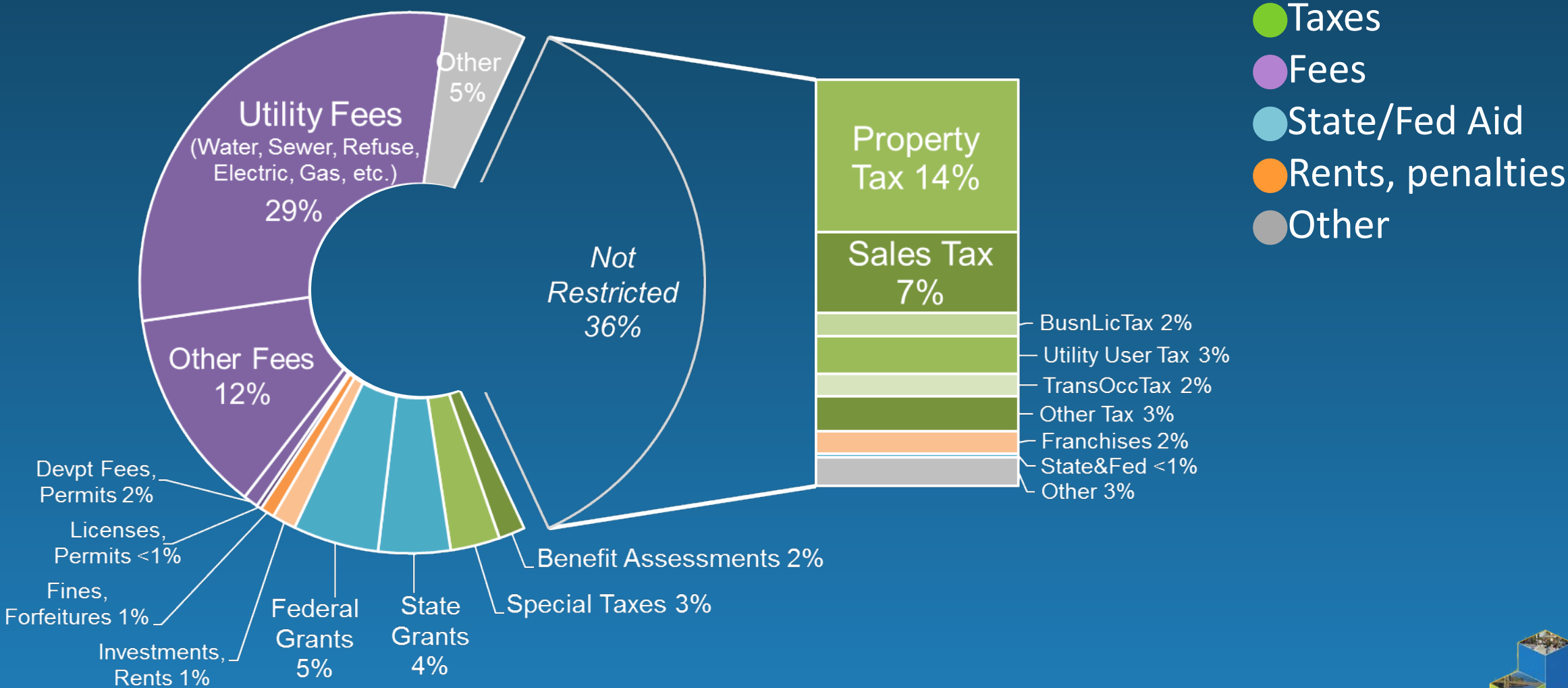
Taxes and Fees/etc. Approval Requirements

(California Constitution)

| | TAX- General | TAX- Parcel or Special (earmarked) | G.O.BOND (w/tax) | Fee / fine / rent |
|---------------------|---|---|--------------------------------------|--------------------------------------|
| City / County | Majority voter approval | Two-thirds voter approval | Two-thirds voter approval | Majority of the governing board.* |
| Special District | n/a | Two-thirds voter approval | Two-thirds voter approval | Majority of the governing board.* |
| K-14 School | n/a | Two-thirds voter approval (parcel tax) | 55% voter approval* | Majority of the governing board.* |
| State | For any law that will increase taxes of any taxpayer, two-thirds of each house of the Legislature ...or majority of statewide voters. | | Statewide majority voter approval | Majority of each house. |



California City Revenues

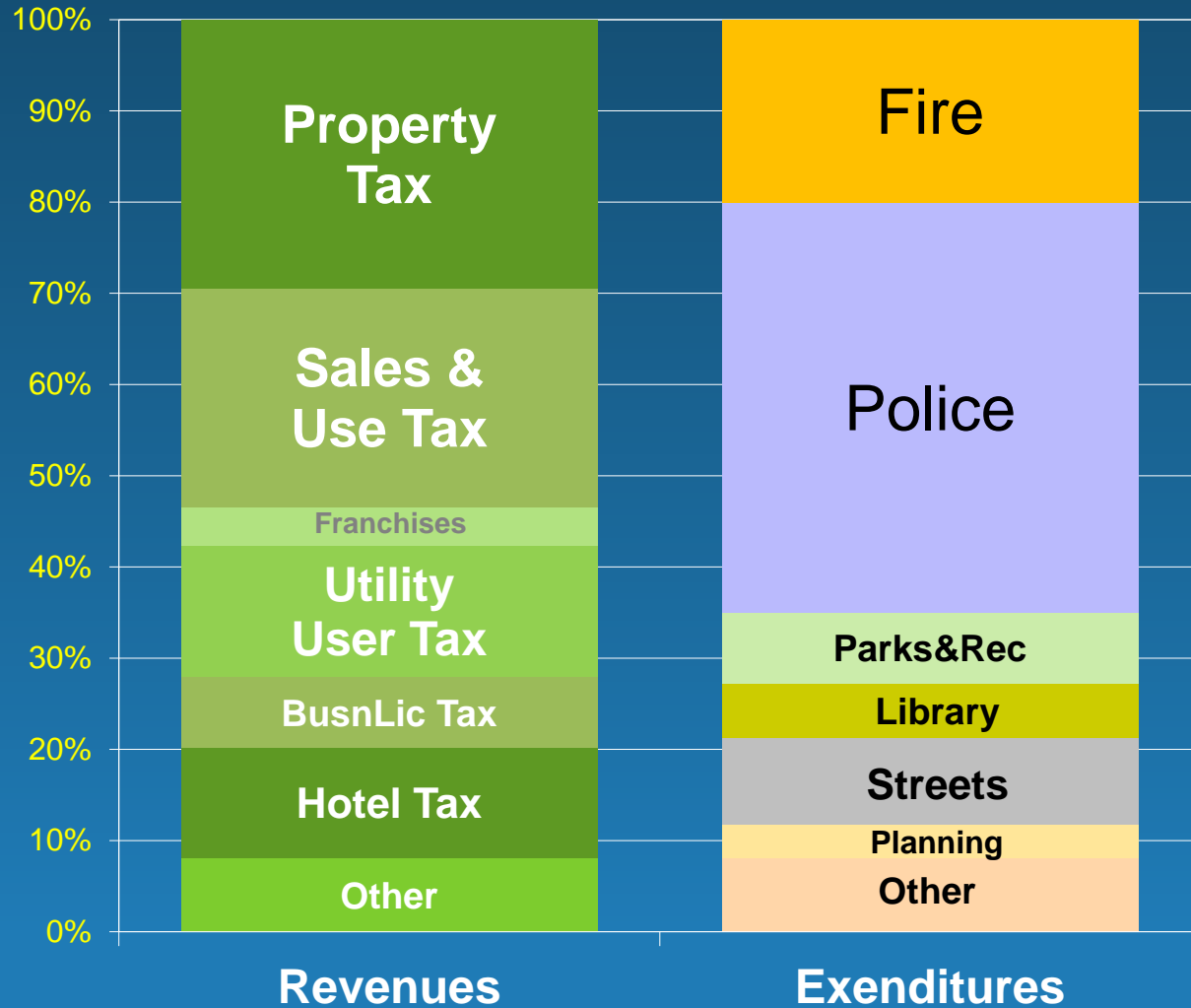


Source: Author's computations from California State Controller 2014-15 data. Does not include the City/County of San Francisco.

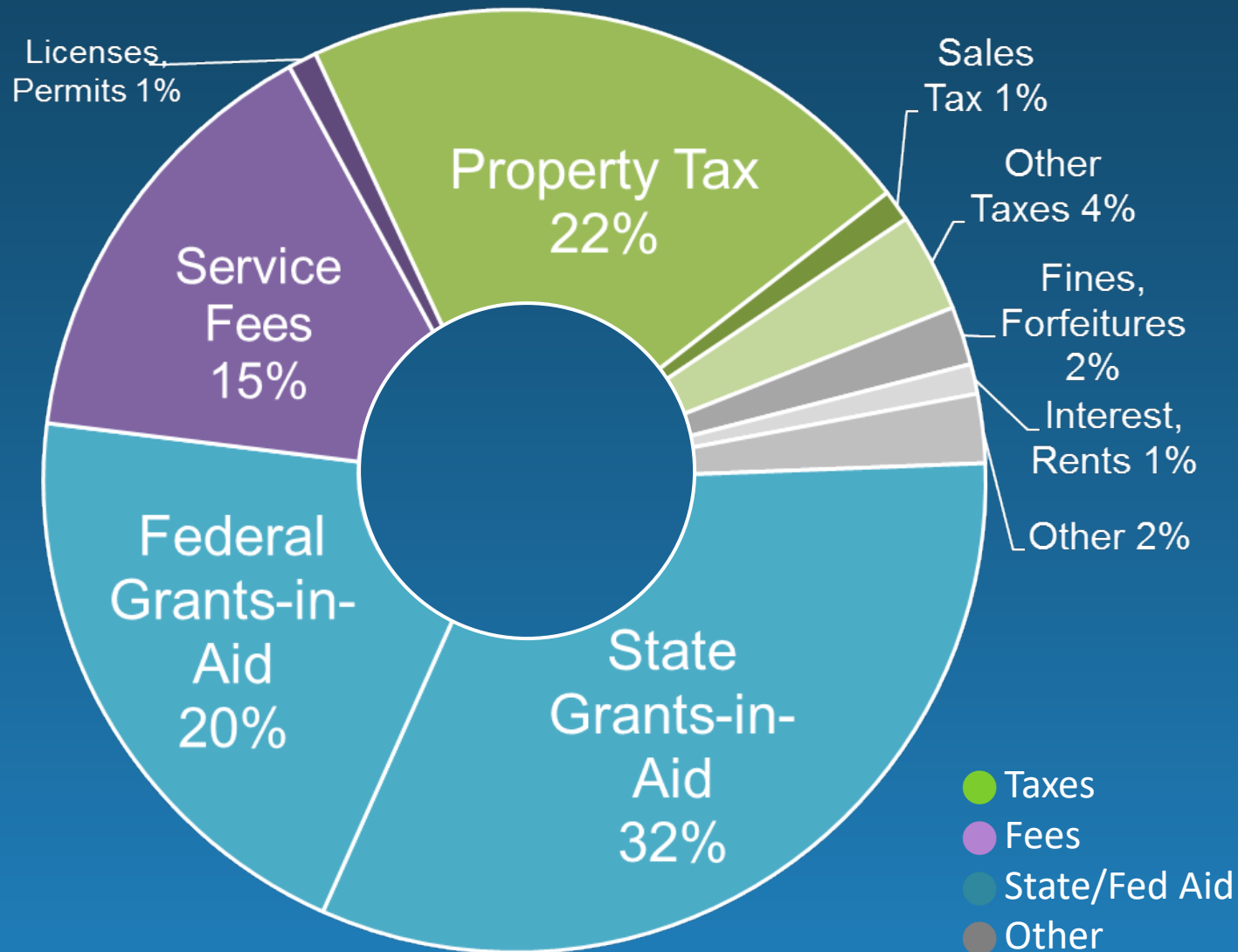


Discretionary Revenues and Spending

Typical Full Service City



California County Revenues



Counties are hybrid local/state

- **state/federal programs:** *Aid to families (CalWORKS), food stamps, foster care, In-Home Support Services (IHSS), alcohol & drug treatment*
- **countywide services:** jails, courts, elections, property tax collection & allocation
- **"city" services to unincorporated areas**

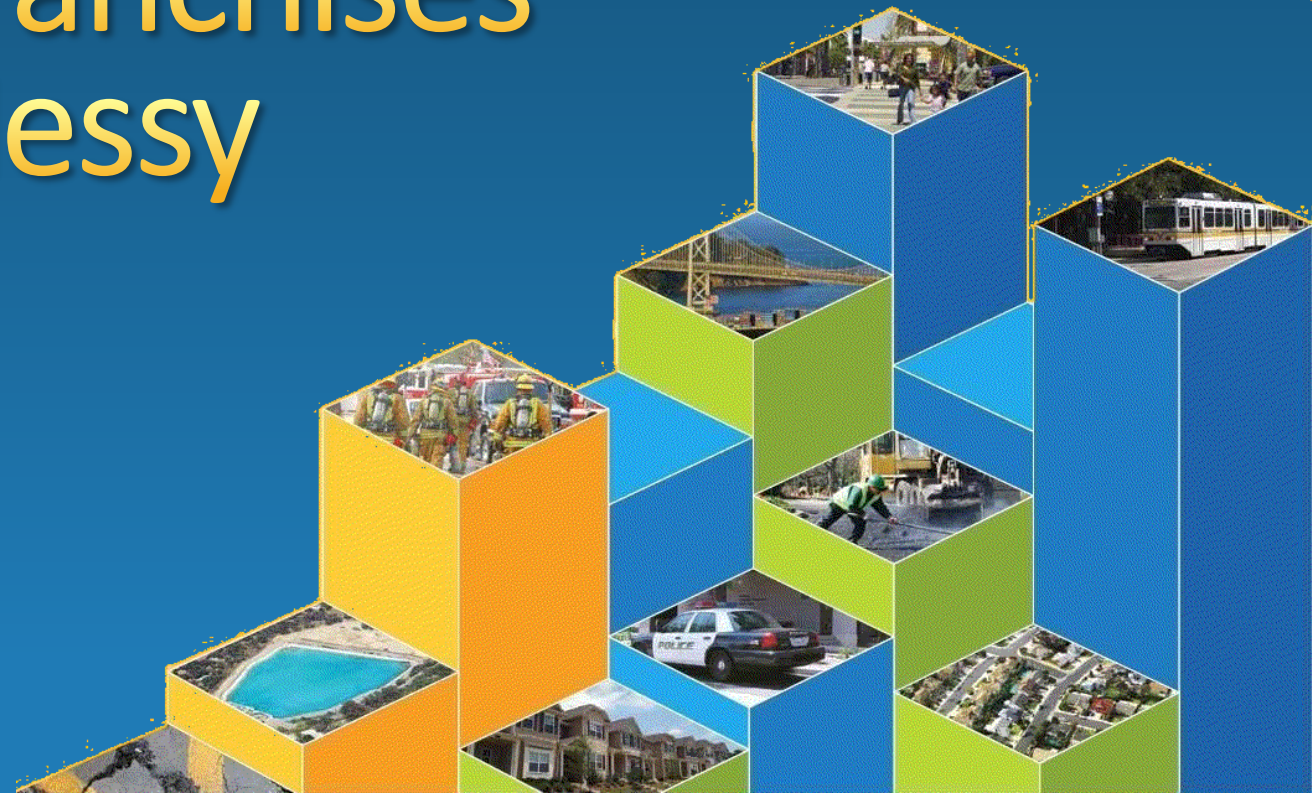
Counties have

- more mandates,
- less discretionary \$, and
- are more vulnerable to state budgetary action

Source: Author's computations from California State Controller 2014-15 data. Includes the City/County of San Francisco.



Garbage Franchises Get Messy



Franchise Fees



Jacks v. City of Santa Barbara (2017 Supreme Court of Calif):

City's franchise fee on Southern California Edison was not a tax requiring voter approval. However, fees for use of government property must prove some reasonable relationship to the value of the rights the franchise confers.



Franchise Fees



Zolly v. Oakland:

Questions:

- *Standing? Franchise fee is on hauler – not the apartment owner plaintiffs*
- *Prop 26 Use of Government Property exception?*
- *Franchise adopted by agreement ... not “imposed” so as to trigger Proposition 26?*
- *Franchise Fee measures the implied “benefit” of use of rights of way (charge for benefit exception). Appellate court (2020) found a lack of relationship.*



Franchise Fees



Zolly v. Oakland: Supreme Court of Calif (2022) 13 Cal.5th 780

Ruling

- apartment owners had standing because they bore economic incidence of fee
- Prop. 26 exception for use of property limited to tangible property, not franchise itself
- Fee was “imposed” so as to trigger Prop. 26 because it was established by legal authority
- Oakland can try to prove at trial that haulers get unusual rights in rights-of-way that are proportionate in value to franchise fee.



Franchise Fees



Colantuono's tips for protecting garbage franchise fees:*

- ✓ Avoid controversy if possible
- ✓ Make a record that haulers get rights in rights-of-way that others do not (like the right to place bins in the street once a week)
- ✓ Make a record that the value of those rights is at least roughly proportionate to the franchise fee
- ✓ Have a cost-of-service study in your record; consider hiring a consultant, and have a lawyer review it
- ✓ Separately cost regulatory fees (like AB 939 compliance fees)

* Colantuono, Highsmith & Whatley, PC. www.chwlaw.us



Huge Threat to Public Services

Draconian, Impractical Ballot
Initiative Headed to the
November 2024 Ballot



Draconian, Impractical Ballot Initiative – November 2024

Initiative #21-0042A1: Limits Ability of Voters and State and Local Governments to Raise Revenues for Government Services. Initiative Constitutional Amendment

Chokes local tax authority. Requires:

- Requires voter approval for taxes applied to territory that is annexed
- Requires sunset date on all new taxes
- General tax ballot label must say “for general government use”
- Repeals *Upland* exception for initiative special taxes
- Local tax advisory measures are prohibited (the Measure A/B approach).



Draconian, Impractical Ballot Initiative – November 2024

Initiative #21-0042A1: Limits Ability of Voters and State and Local Governments to Raise Revenues for Government Services. Initiative Constitutional Amendment

Restricts local fee authority

- Fees by limiting limited “actual cost” of providing the product or service for which the fee is charged. “Actual cost” is defined as the “minimum amount necessary.”
- Fees - including for use of government property - must be “reasonable to the payor”
- Repeals fee for “special benefit” exception to Prop 26 “tax” definition
- Fees must be adopted by legislative body by ordinance, not staff or a commission
- Changes legal standard from “preponderance of the evidence” to “clear and convincing evidence” to prove a fee or charge is not a tax and does not exceed “actual cost.”



Draconian, Impractical Ballot Initiative – November 2024

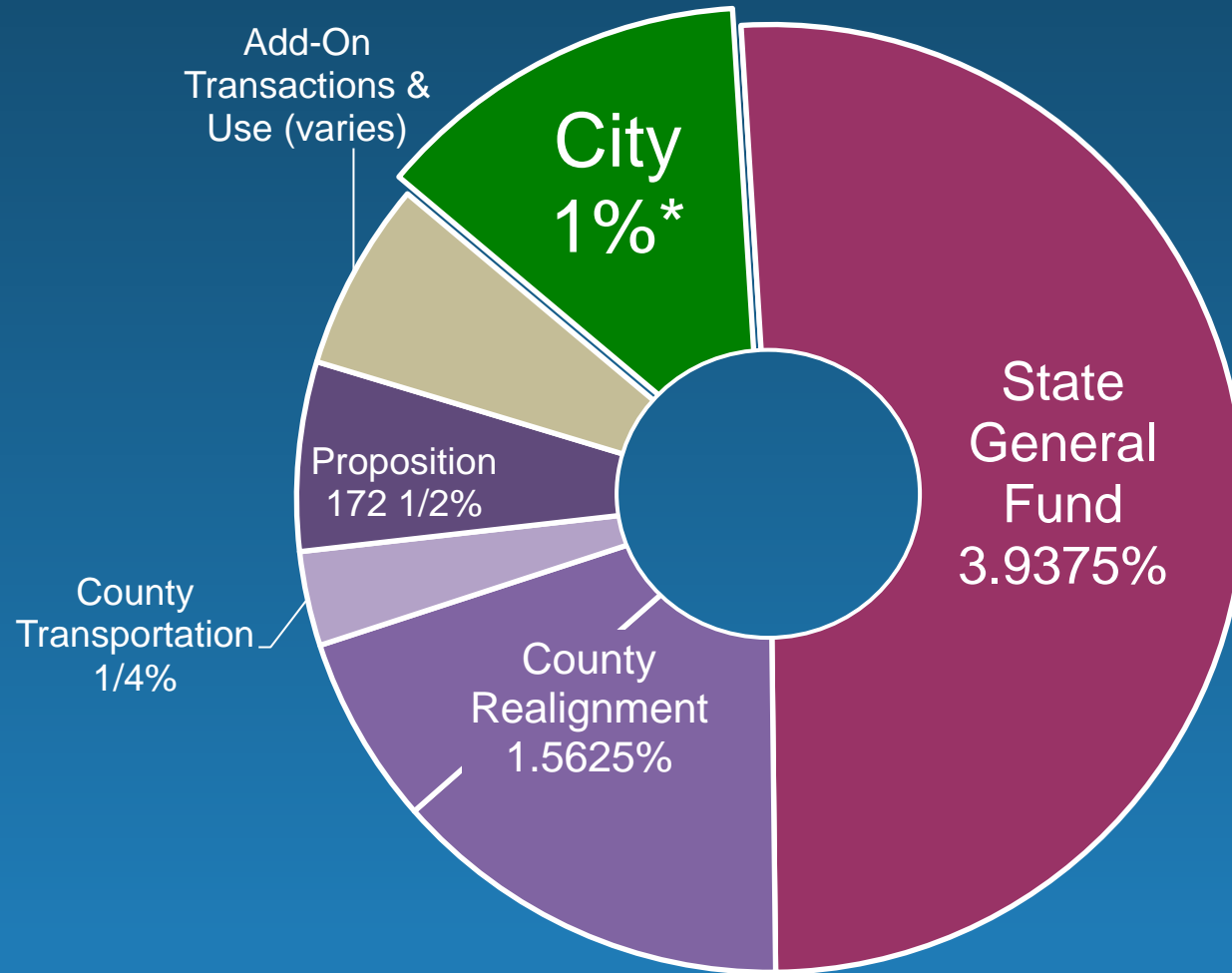
Initiative #21-0042A1: Limits Ability of Voters and State and Local Governments to Raise Revenues for Government Services. Initiative Constitutional Amendment

Also ...

- Fines require “adjudicatory process”
- No VMT tax or fee as condition of development or occupancy
- Retroactive window: taxes, fees approved after Jan 1, 2022 will sunset in Dec 2025 if not readopted in compliance with the initiative
 - At least \$2 billion of taxes approved in 2022-2024 must be re-adopted in 2025
 - New ballot language, new sunsets, new voter thresholds
 - \$ Billions of fees must be readopted to comply in 2025



Where Your Sales Tax Goes



| | |
|------------------------|--------------|
| City* | 1.0000 |
| County TDA | 0.2500 |
| Proposition 172 | 0.5000 |
| County Realignment | 1.5625 |
| State General Fund | 3.9375 |
| Total base rate | 7.25% |

* For taxable sales in unincorporated areas, the local 1% rate goes to the county.

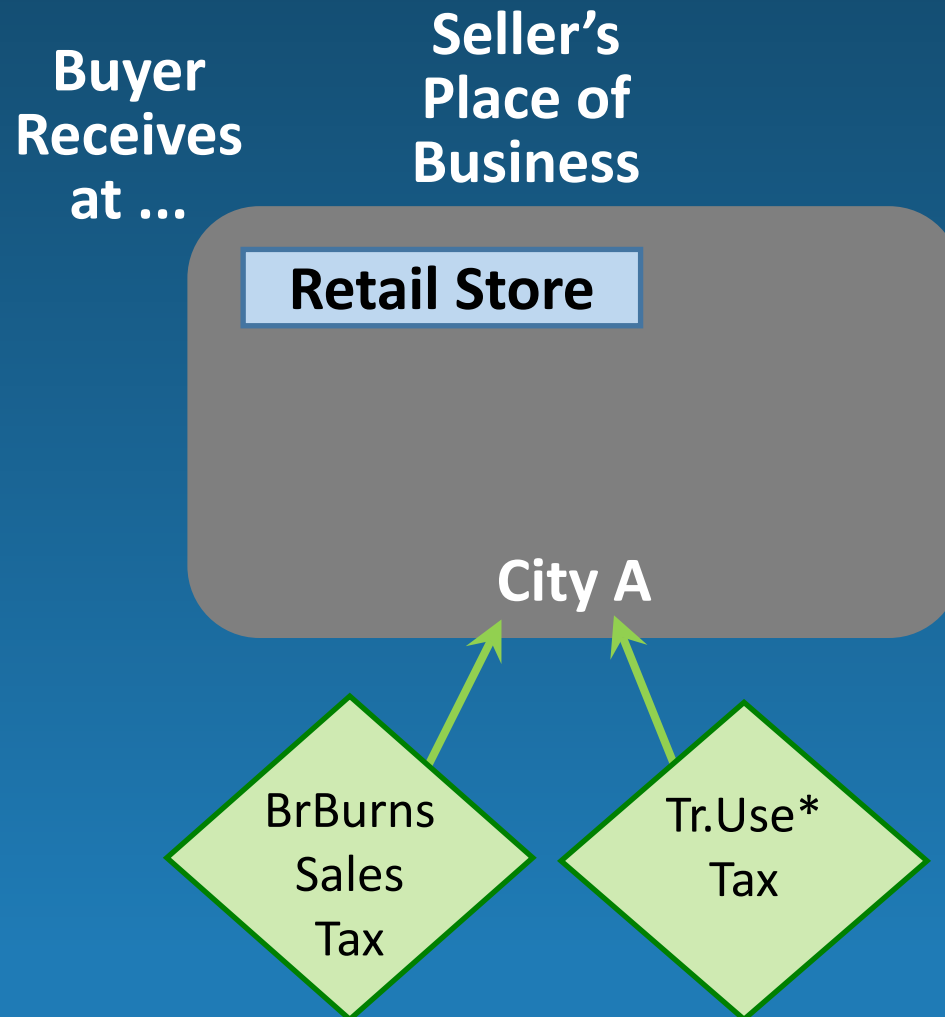


Change in Sales Taxes

- ✓ *South Dakota v. Wayfair (SCOTUS 2018)*: States can require Sellers with significant business within a state to collect/remit taxes, despite not having physical presence in the state.
 - Large uptick of Use Tax (Sales Tax) from out-of-state purchase beginning in spring 2019
 - Also uptick in Transactions & Use Tax (add-on sales tax) including from instate transactions
- ✓ Pandemic hit certain sectors hard (e.g. restaurants, hospitality)
- ✓ Pandemic accelerated growth in online retail



Over the Counter Sale

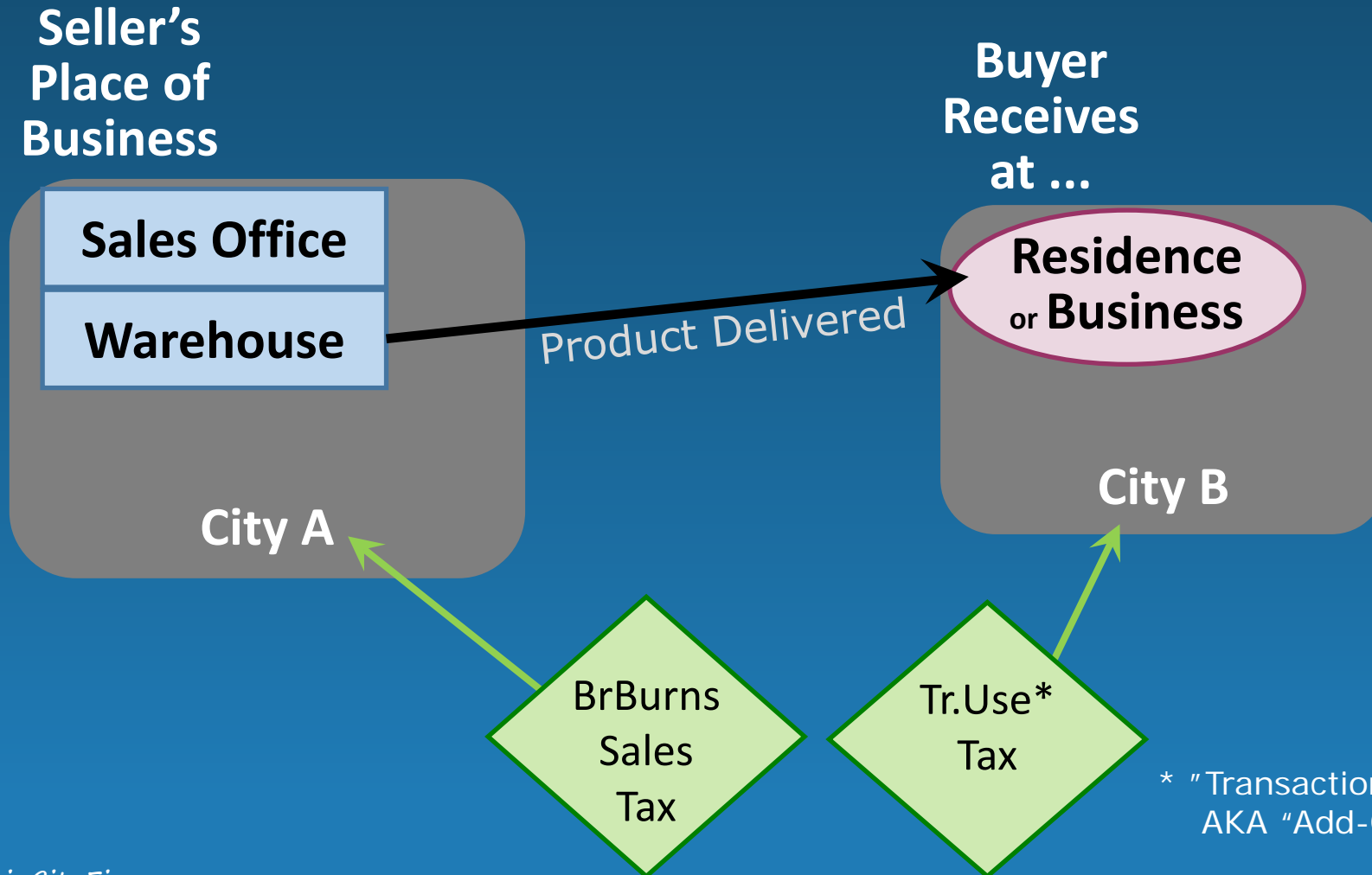


* "Transactions and Use Tax"
AKA "Add-On Sales Tax"



Remote (Online) Sale

Seller with *In-State* Presence

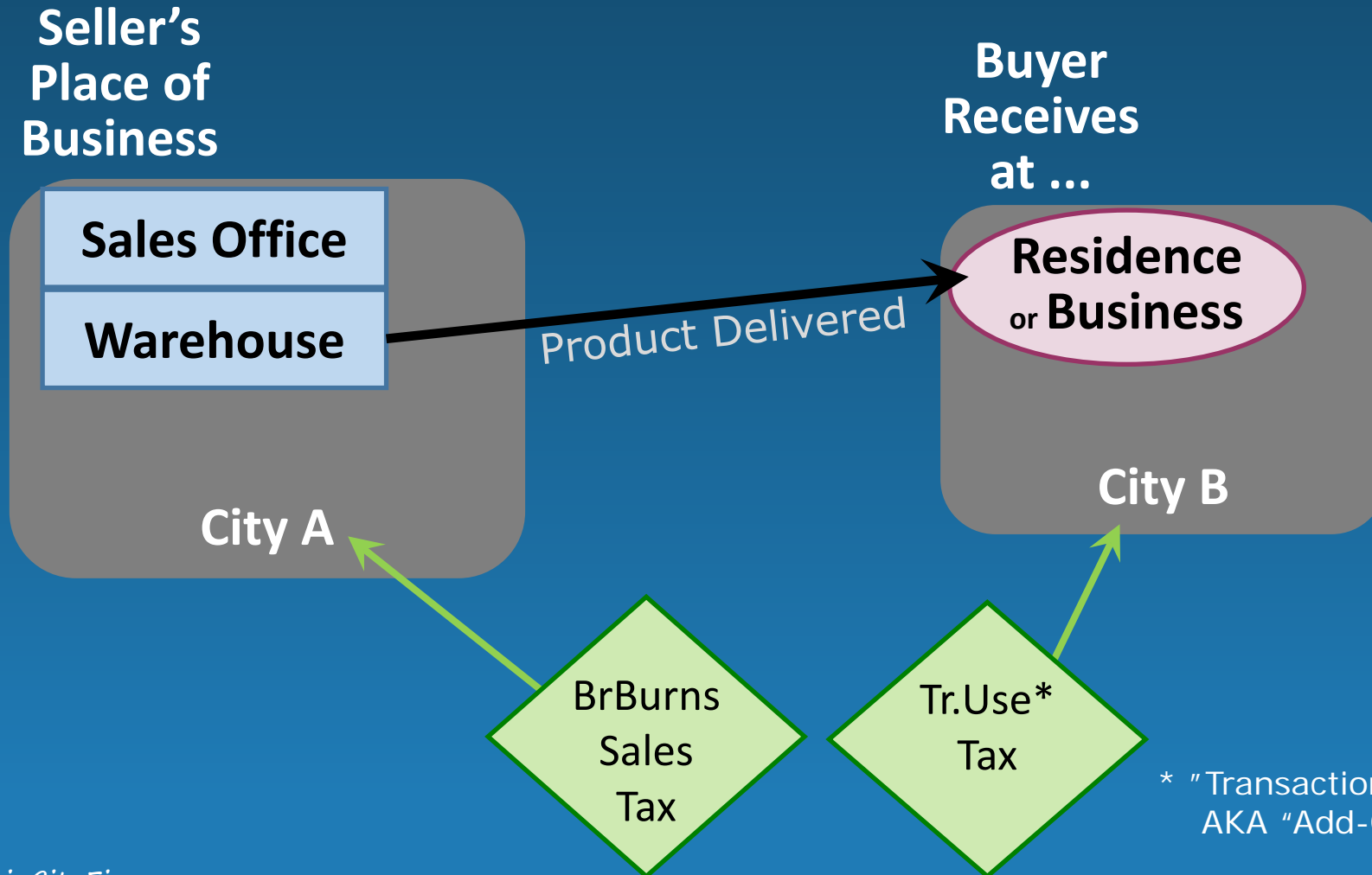


* "Transactions and Use Tax"
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Remote (Online) Sale

Seller with *In-State* Presence



Issues

- Concentration of BB revenues
- Revenue kickback agreements

Good News

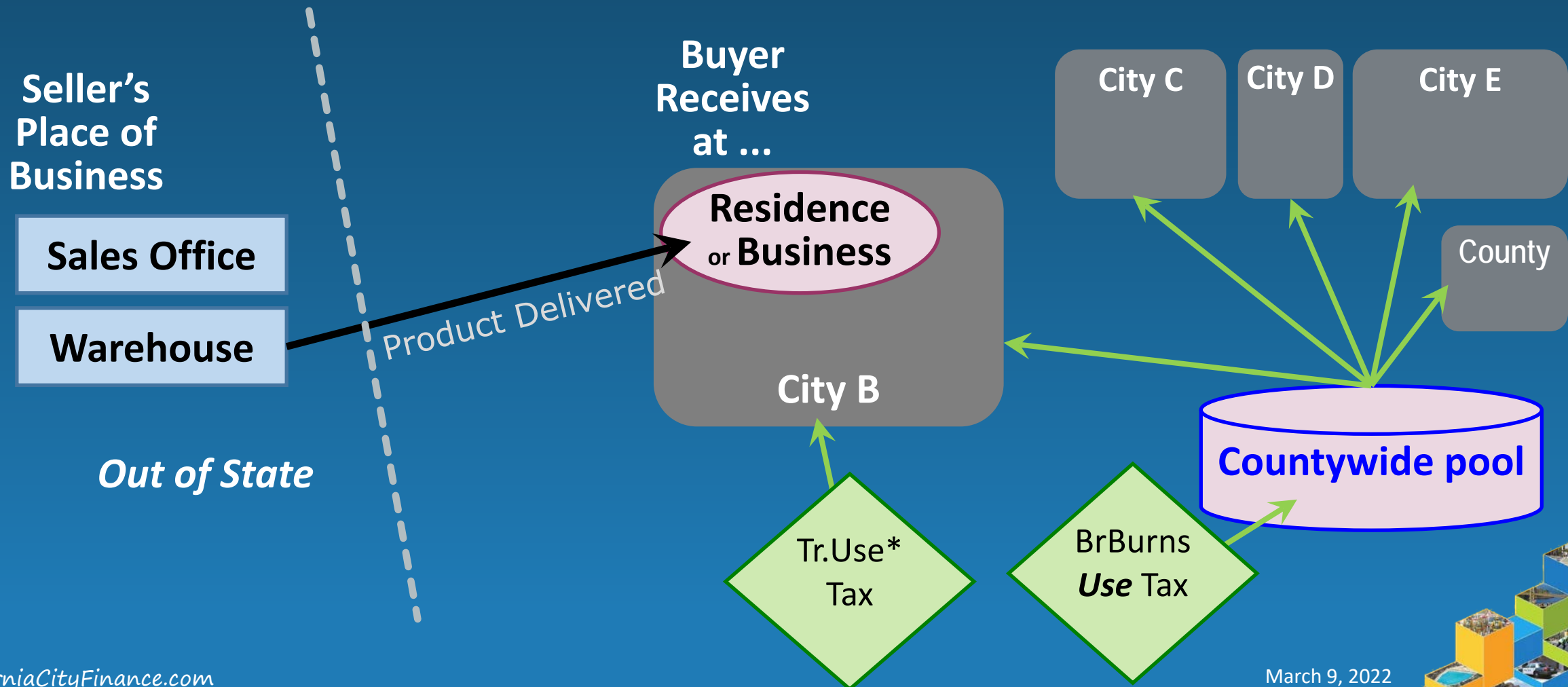
- AB147/Wayfair improving TrUT collections

* "Transactions and Use Tax"
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Remote (Online) Sale

Seller with Out-of-State Presence



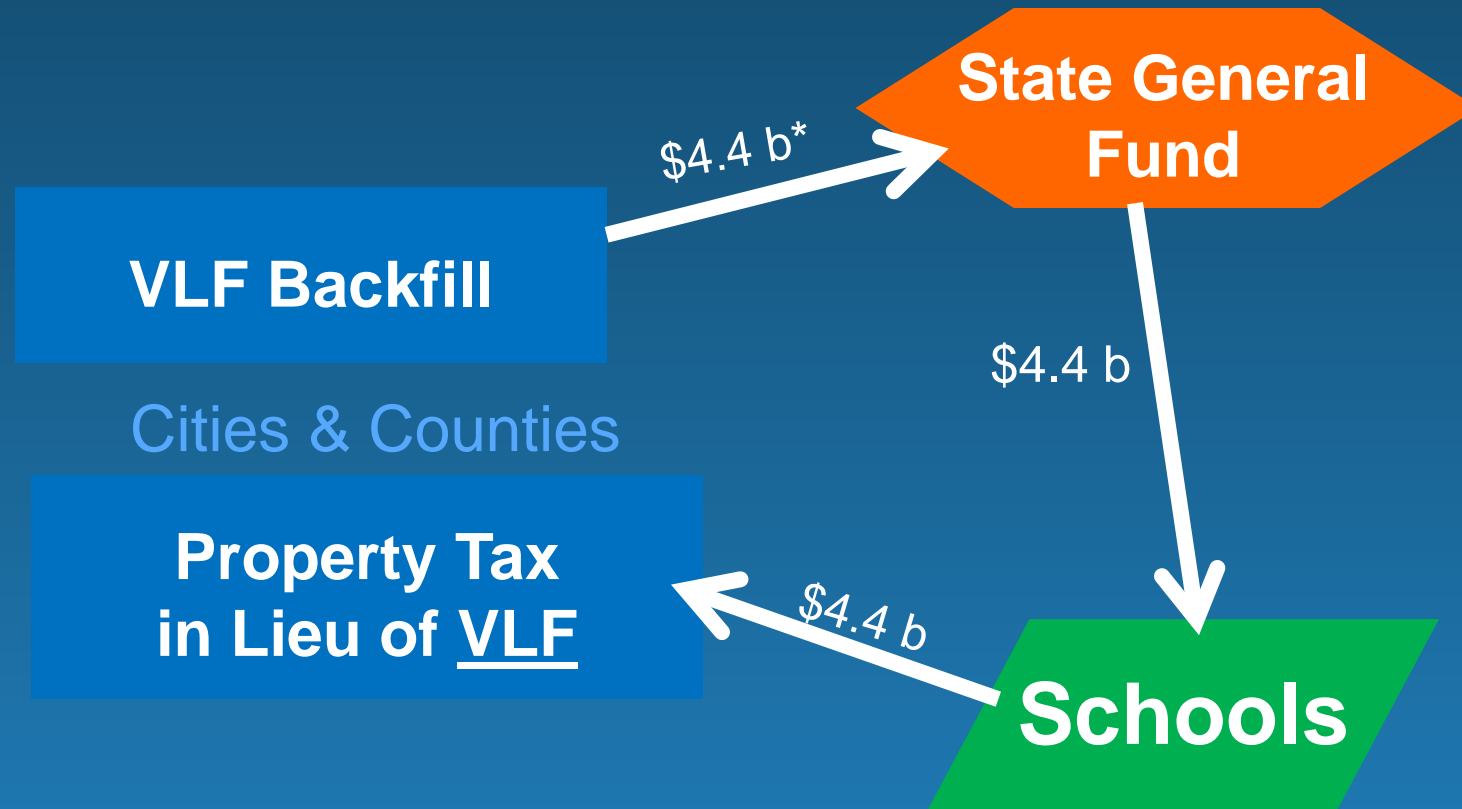
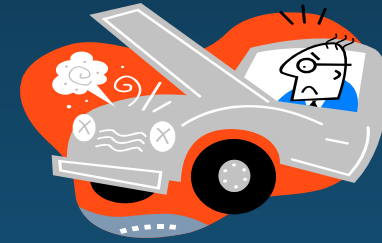
Game Over for New Cities and Annexations?

Pernicious Effects of the
VLF-Property Tax Swap

of 2004



The VLF-Property Tax Swap of 2004

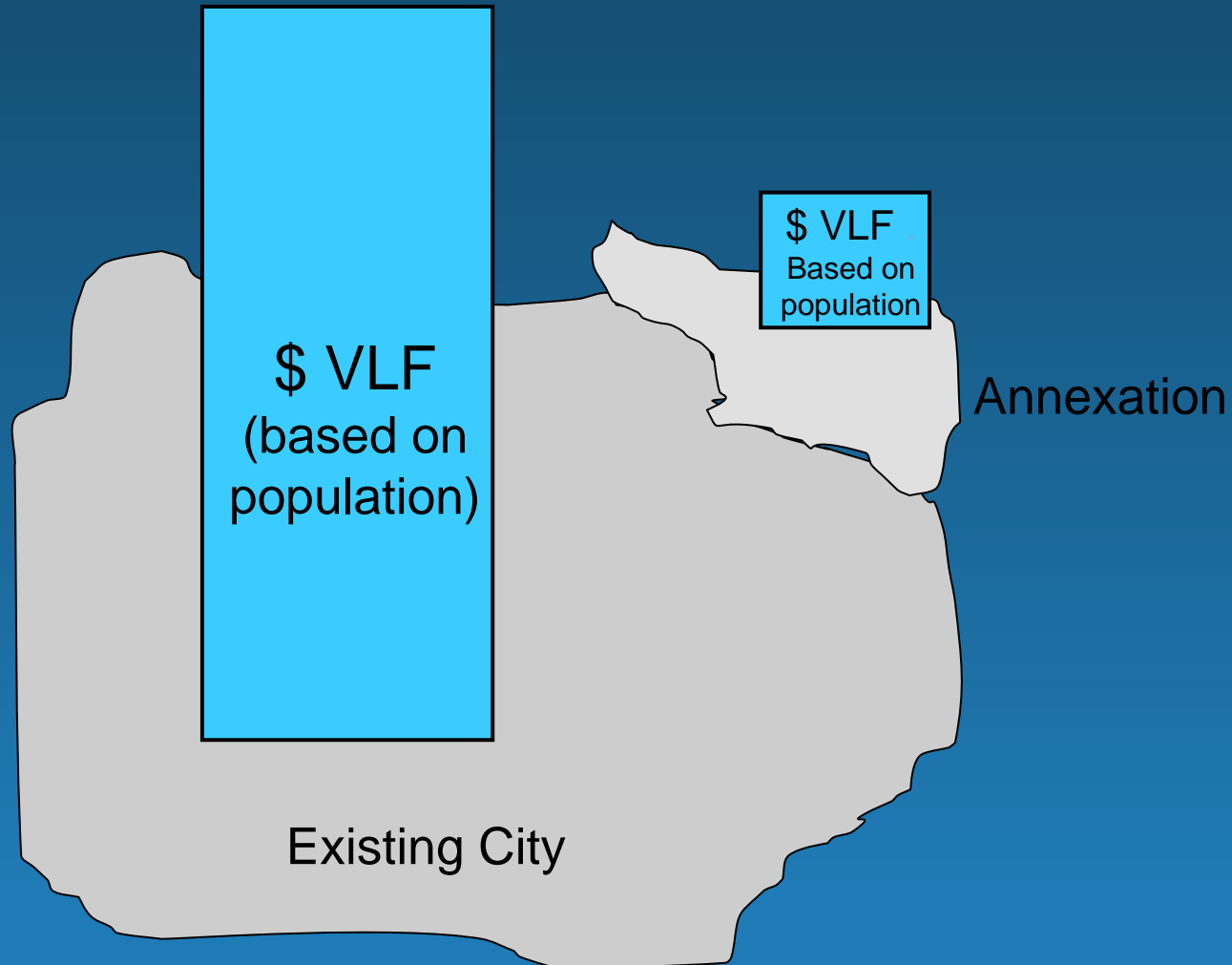


* in FY2004-05



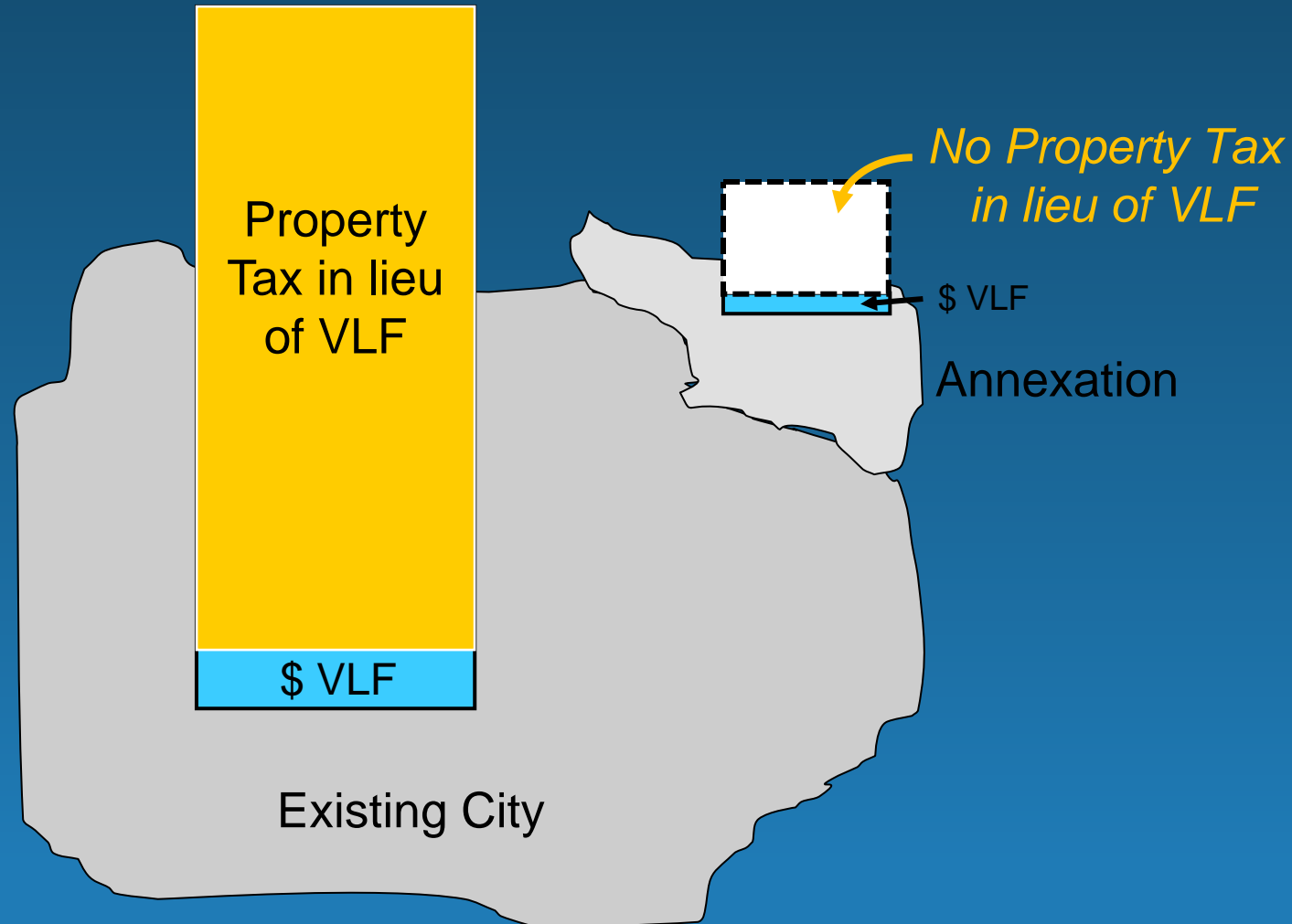
Vehicle License Fee \$ Allocation

Prior to 2004



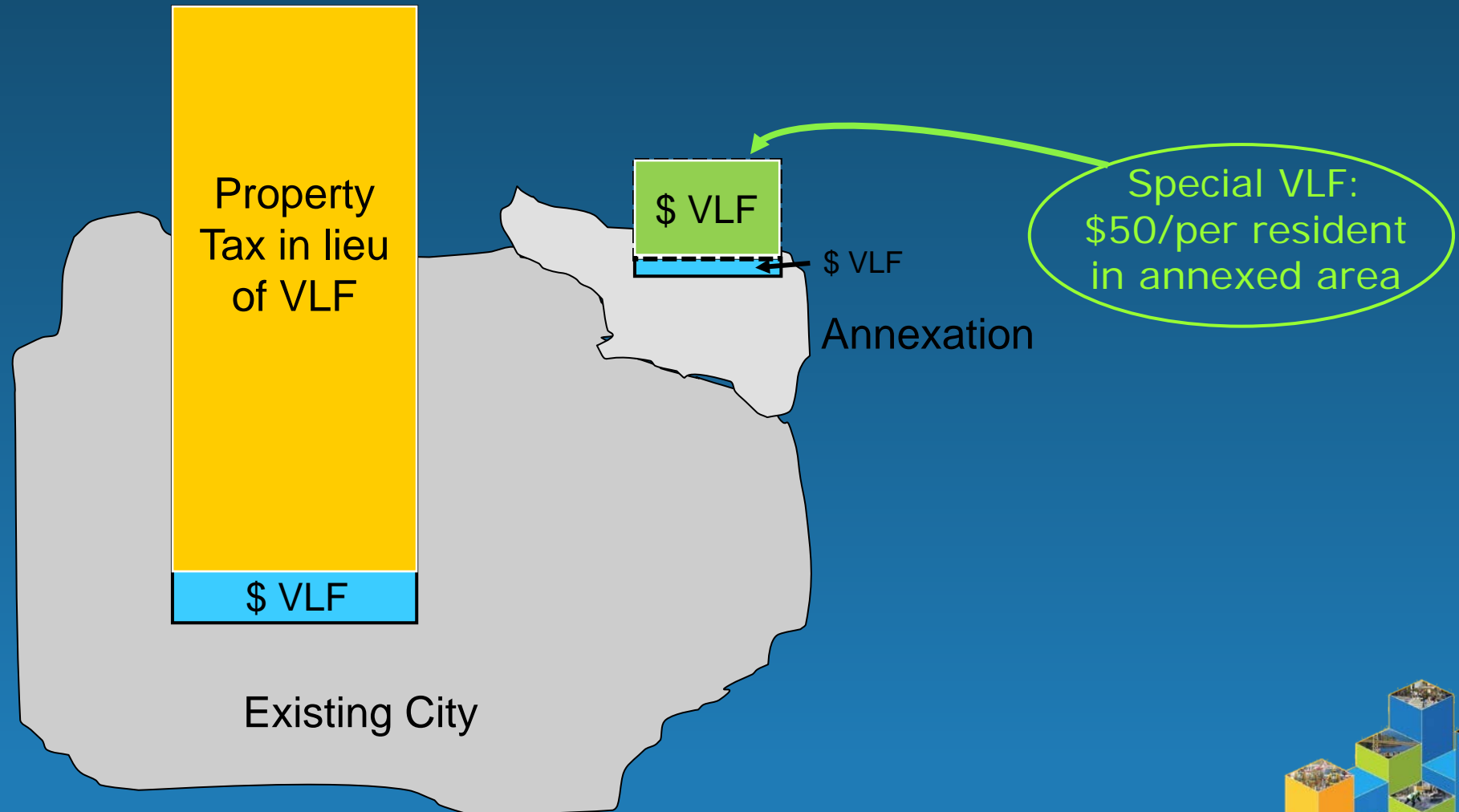
Vehicle License Fee \$ Allocation

with PropertyTax-VLF Swap
of 2004



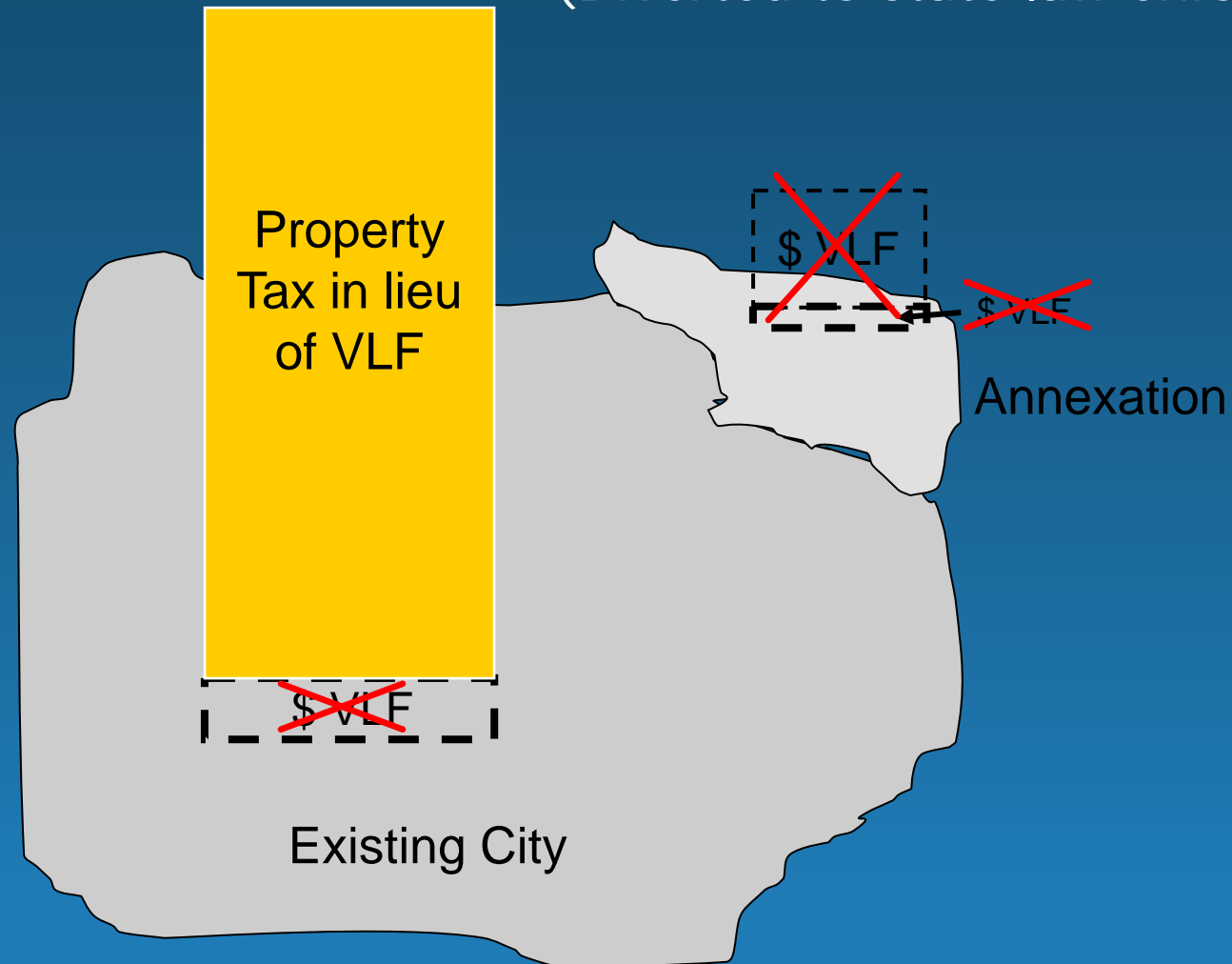
Vehicle License Fee \$ Allocation

AB1602 (Laird) 2006

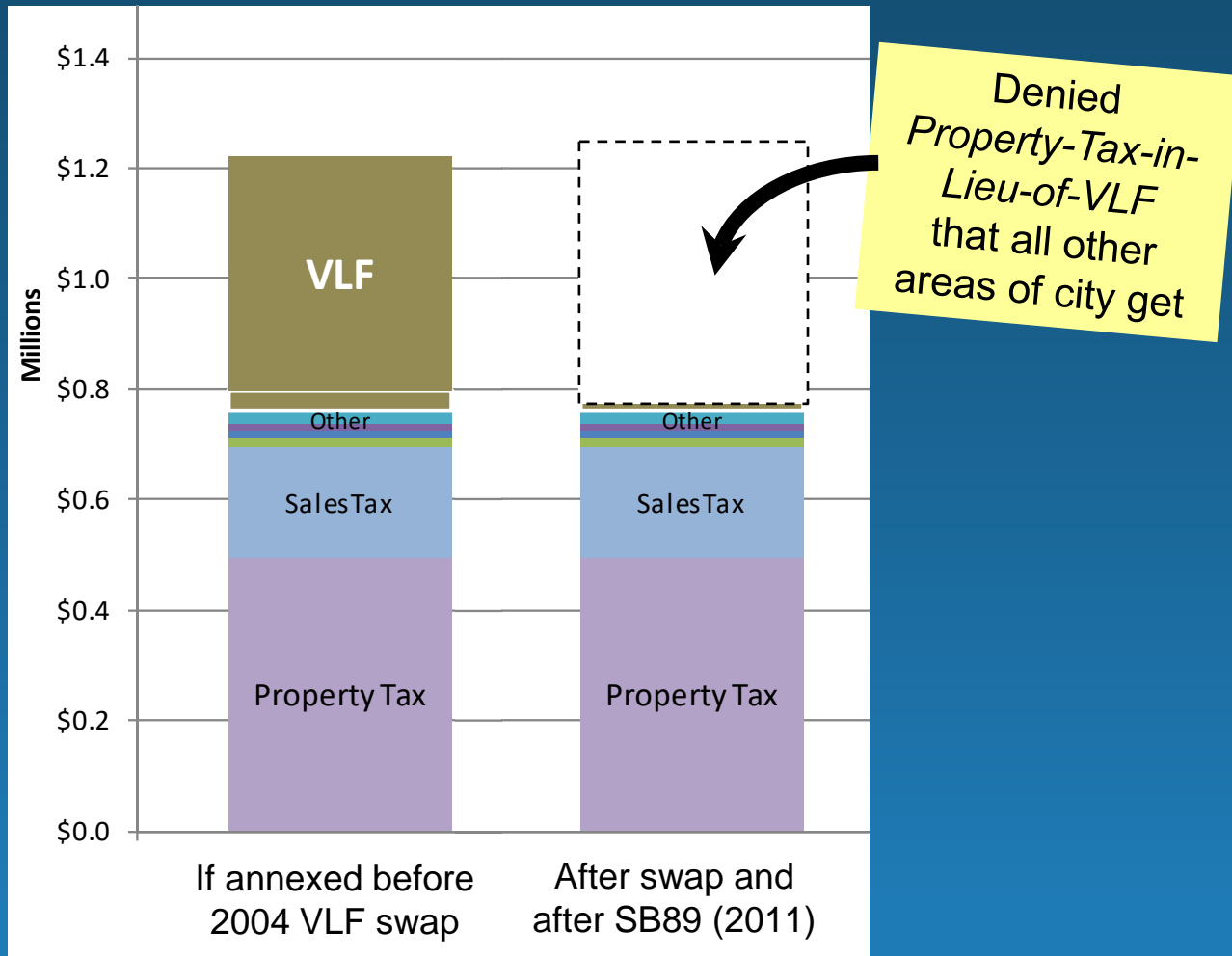


Vehicle License Fee \$ Allocation

SB89 (2011) Eliminated All City VLF
(Diverted to state law enforcement grants)

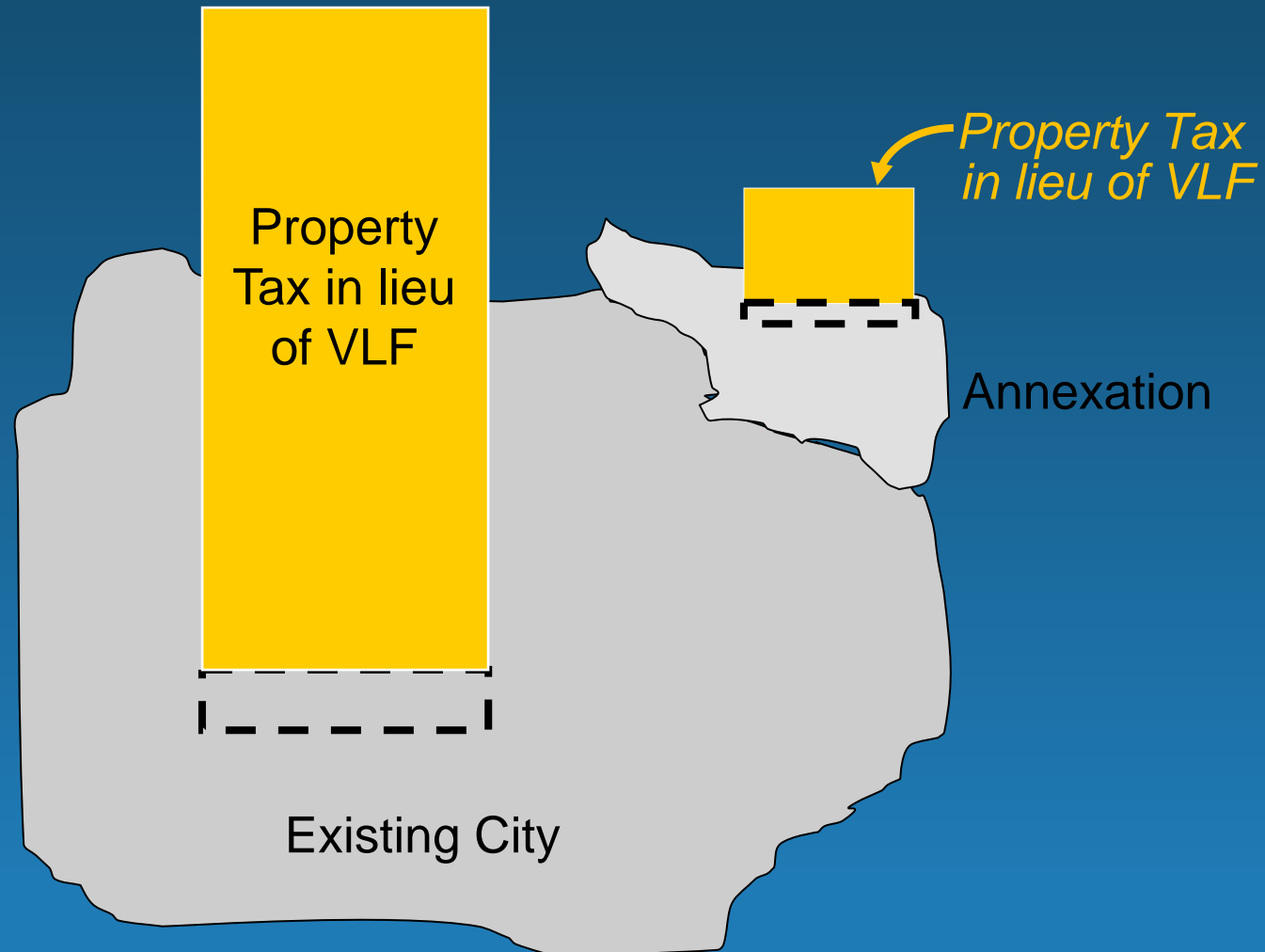


The Lack of VLF Replacement Makes Many Annexations Fiscally Unviable



Vehicle License Fee \$ Allocation

AB213 (Reyes)



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**The California Local Government
Finance Almanac**

YOU NEED THIS



An essential resource for anyone involved in local government finance in California.

Up-to-date information on local fees, taxes, charges and intergovernmental revenue for local governments including laws, court decisions, state tax rates and allocation formulas.