

[Assembly Constitutional Amendment 4](#) (Frazier)

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Program: Local Sales and Use and Transactions and Use

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California Constitution Section 4, Article XIII A; Section 2, Article XIII C

Effective: Upon approval of voters at November 2016 General Election

**Summary:** Reduces from 2/3 to 55% the vote threshold required for a county, city, city and county, or special district to impose, extend, or increase a local sales and use tax or a transactions and use tax (district tax) to fund local transportation projects.

**Purpose:** To lower the voter approval requirement to enhance local governments' ability to pass local tax measures to fund local transportation projects.

**Fiscal Impact Summary:** No impact to state revenue. The local revenue impact is specific to each local jurisdiction.

**Existing Law:** Under **Article XIII A, Section 4, of the California Constitution**, cities, counties, and special districts, by a two-thirds vote of the voters of such districts, may impose special taxes, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such districts.

Under **Article XIII C, Section 1, of the California Constitution**, "general tax" means any tax imposed for general governmental purposes. "Special tax" means any tax imposed for specific purposes, including a tax imposed for specific purposes that is placed into a general fund.

Under **Article XIII C, Section 2, of the California Constitution**, a local government may impose a general tax by a majority vote of the voters and impose a special tax by a two-third vote of the voters. In addition, Section 2 provides that special purpose districts or agencies have no power to levy general taxes.

The State Board of Equalization (BOE) administers locally-imposed sales and use taxes under the Bradley-Burns Uniform Local Sales and Use Tax Law and under the Transactions and Use Tax Law, which are set forth in the Revenue and Taxation Code. By law, cities, counties, and special districts contract with the BOE to administer the ordinances imposing the local sales taxes and transactions and use (district) taxes.

The **Bradley-Burns Uniform Local Sales and Use Tax Law**<sup>1</sup> authorizes cities and counties to impose local sales and use tax. This tax rate currently<sup>2</sup> is fixed at 1% of the sales price of tangible personal property sold at retail in the local jurisdiction, or purchased outside the jurisdiction for use within the jurisdiction. Of this 1%, cities and counties use 0.75% to support general operations. The remaining 0.25% is designated by statute for county transportation purposes, but restricted for road maintenance or the operation of transit systems. The counties receive the 0.25% tax for transportation purposes regardless of whether the sale occurs in a city or in the unincorporated area of a county. In California, all cities and counties impose Bradley-Burns local taxes at the uniform rate of 1%.

The **Transactions and Use Tax Law**<sup>3</sup> and the statutes imposing additional local taxes<sup>4</sup> authorize cities and counties to impose district taxes under specified conditions. Counties may impose a district tax for

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<sup>1</sup> Part 1.5 of Division 2 of the Revenue and Taxation Code (RTC), commencing with Section 7200.

<sup>2</sup> RTC Section 7203.1.

<sup>3</sup> Part 1.6 of Division 2 of the RTC, commencing with Section 7251.

<sup>4</sup> Part 1.7 of Division 2 of the RTC, commencing with Section 7280.

general purposes and special purposes at a rate of 0.125%, or multiples of 0.125%, if the tax ordinance is approved by the required percentage of voters in the county. Cities also may impose a district tax for general purposes and special purposes at a rate of 0.125%, or multiples of 0.125%, if the tax ordinance is approved by the required percentage of voters in the city. Under these laws, the combined district tax rate imposed within any county cannot exceed 2%<sup>5</sup> (with the exception of the counties of Alameda, Contra Costa, and Los Angeles<sup>6</sup>).

Counties can also establish a transportation authority to impose district taxes under the Public Utilities Code (PUC). Various statutes under the PUC authorize a county board of supervisors to create an authority within the county or designate a transportation-planning agency to impose a district tax, subject to the applicable voter approval requirement. District taxes imposed under the PUC must conform to the administrative provisions contained in the Transactions and Use Tax Law, including the requirement to contract with the BOE to perform all functions related to the administration and operation of the ordinance. In general, these statutes specify a tax rate to be imposed or specify that a rate may be imposed in specific increments (0.25% increments) up to a maximum tax rate.

The following table provides the statutes authorizing the imposition of district taxes and the applicable voter approval requirement.

Local Jurisdiction	Purpose	Voter Approval Threshold	Code Section
County	General Purpose tax	2/3 vote of Board of Supervisors <b>and</b> majority of county voters	RTC 7285
County	Specific Purpose tax (expenditure plan required)	2/3 vote of Board of Supervisors <b>and</b> 2/3 vote of county voters	RTC 7285.5
City	General Purpose tax	2/3 vote of City Council <b>and</b> majority of city voters	RTC 7285.9
City	Specific Purpose tax (expenditure plan required)	2/3 vote of City Council <b>and</b> 2/3 vote of city voters	RTC 7285.91
County Transportation Authority <sup>7</sup>	Transportation tax (expenditure plan required)	2/3 vote of Transportation Authority <b>and</b> 2/3 vote of county voters	PUC Divisions 10-25

**Proposed Law:** This bill amends Section 2 of Article XIII C of the California Constitution to allow a county, city, city and county, or special district, with the approval of 55% of its voters, to impose, extend or increase a sales and use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or a transactions and use tax imposed in accordance with the Transactions and Use Tax Law to fund local transportation projects.

The bill defines a “local transportation project” as the planning, design, development, financing, construction, reconstruction, rehabilitation, improvement, acquisition, lease, operation, or maintenance of local streets, roads, and highways, state highways and freeways, and public transit systems.

The bill provides that this constitutional amendment will become effective immediately upon approval by the voters and will apply to any local measure imposing, extending, or increasing a local sales and use

<sup>5</sup> RTC Section 7251.1.

<sup>6</sup> Exceptions authorized through AB 1324 (Ch. 795, 2014, Skinner) for City of El Cerrito, AB 210 (Ch. 194, 2013, Wieckowski) for Alameda County and Contra Costa County and SB 314 (Chapter 785, 2003, Murray) for the Los Angeles Metropolitan Transportation Authority.

<sup>7</sup> Some transportation authorities encompass multiple counties, such as Bay Area Rapid Transit District (encompasses all of three counties) and Sonoma Marin Area Rail Transportation Authority (encompasses all of two counties).

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE’s formal position.

tax for the funding of transportation projects that is submitted at the same election.

This bill also amends Section 4 of Article XIII A to conform to the provisions that amend Section 2 of Article XIII C.

This constitutional amendment would be placed on the next statewide ballot and must be approved by a majority of California voters.

**Legislative History:** Numerous unsuccessful measures have been introduced in the past that would have lowered the voter approval threshold for a local entity to impose a special tax.

Session	Bill	Summary
2013-14	ACA 3 Campos	Would have constitutionally authorized a city, county, or special district, subject to 55% voter approval, to impose a special tax to provide funding for local public safety services. Never heard in a committee.
2013-14	SCA 4 Liu	Would have constitutionally authorized a city, county, or special district, subject to 55% voter approval, to impose a special tax to provide funding for local transportation projects. Died in the Senate Appropriations Committee.
2013-14	SCA 7 Wolk	Would have constitutionally authorized a city, county, or special district, subject to 55% voter approval, to impose a special tax to provide funding for public libraries. Died in the Senate Appropriations Committee.
2013-14	SCA 8 Corbett	Would have constitutionally authorized a city, county, or special district, subject to 55% voter approval, to impose a special tax to provide funding for local transportation projects. Died in the Senate Appropriations Committee.
2013-14	SCA 9 Corbett	Would have constitutionally authorized a city, county, or special district, subject to 55% voter approval, to impose a special tax to provide funding for community and economic development projects. Died in the Senate Appropriations Committee.
2013-14	SCA 11 Hancock	Would have constitutionally authorized a city, county, or special district, subject to 55% voter approval, to impose a special tax. Died in the Senate Appropriations Committee.
2011-12	ACA 23 Perea	Would have constitutionally authorized a city, county, or special district, subject to 55% voter approval, to impose a special tax to provide funding for local transportation projects. Died on the Assembly inactive file.
2009-10	SCA 12 Kehoe	Would have constitutionally authorized a city, county, or special district, subject to 55% voter approval, to impose a special tax for funding specified fire protection and public safety purposes. Died on the Senate inactive file.
2009-10	ACA 9 Huffman	Would have constitutionally authorized a city, county, or special district, subject to 55% voter approval, to impose a special tax. Died on the Assembly inactive file.
2009-10	ACA 15 Arambula	Would have constitutionally authorized a city, county, or special district, subject to 55% voter approval, to impose a special tax to provide funding for local transportation projects. Died on the Assembly inactive file.

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2007-08	SCA 18 Torlakson	Would have constitutionally authorized an education finance district, established pursuant to statute, with approval by a majority of the district’s voters, to impose a special tax. Died in Senate Revenue and Taxation Committee.
2007-08	SCA 21 Kehoe	Would have constitutionally authorized a city, county, or special district, subject to 55% voter approval, to impose a special tax for funding fire protection services and certain sheriff and police equipment and services. Died in Senate Revenue and Taxation Committee.
2007-08	ACA 10 Feuer	Would have constitutionally authorized a city, county, or special district, subject to 55% voter approval, to impose a special tax for the purpose of paying the principal, interest, and redemption on bonded indebtedness incurred to fund specified transportation infrastructure. Never heard in a committee.
2005-06	ACA 7 Nation	Would have constitutionally authorized a city, county, or special district, subject to 55% voter approval, to impose a special tax. Held in Assembly Appropriations.
2005-06	ACA 16 Gordon	Would have constitutionally authorized a city, county, or special district, subject to 55% voter approval, to impose a special tax for funding sheriff, police, or fire protection services. Died on the Assembly inactive file.

**Commentary:**

**1. District taxes currently administered by the BOE.** Beginning April 1, 2015, 202 local jurisdictions (city, county, special purpose authority) impose a district tax for general and special purposes. Of the 202 district taxes, 48 are county-imposed and 154 have city-imposed taxes. Four of the 48 county-imposed taxes are general purpose taxes and 44 are special purpose taxes. Twenty-eight of the 48 special purpose taxes are imposed for transportation purposes.

Of the 154 city-imposed taxes, 124 are general purpose taxes and 30 are special purpose taxes. Four of the 30 special purpose taxes are imposed for transportation purposes.

Currently, the individual district tax rates vary from 0.1%<sup>8</sup> to 1%. Some cities and counties have more than one district tax in effect, while others have none. Accordingly, combined state, local and district tax rates generally range from 7.5% to 9.5%, with the exceptions of the cities of Albany, Hayward, San Leandro, and Union City in Alameda County, the City of El Cerrito in Contra Costa County, and the cities of La Mirada, Pico Rivera, and South Gate in Los Angeles County, which, subject to the specific exemptions discussed above, each have a tax rate of 10%. A listing of the district taxes, rates, and effective dates is available on the BOE’s website: [www.boe.ca.gov/sutax/pdf/districtratelist.pdf](http://www.boe.ca.gov/sutax/pdf/districtratelist.pdf).

**2. The 2% cap.** Existing law allows cities and counties to impose district taxes as long as the combined rate in the county does not exceed 2%. The city district taxes count against the maximum 2% cap. Consequently, counties are limited in their ability to impose new taxes when cities enact new district taxes within their county.

Reducing the vote threshold to 55% for local sales and use taxes and district taxes for transportation projects likely will result in the passage of special tax measures that otherwise may have failed under the existing two-thirds vote requirement. As a result, more cities and counties will likely

<sup>8</sup>Through specific authority, SB 1187 (Ch. 285, Stats. 2001, Costa) authorized Fresno County to impose a 0.1% district tax for zoological purposes.

approach or reach the 2% cap. Thus, more legislation may be introduced to increase the current 2% cap or make certain taxes not count towards the cap.

This year's AB 464 (Mullin and Gordon) would have increased the current 2% cap to 3%. However, the bill was vetoed by the Governor (see Comment 5 of the analysis).

**3. Alameda, Contra Costa, Los Angeles, and San Mateo Counties have reached the 2% limit; Marin, San Diego, and Sonoma Counties are near the 2% limit.**

- Alameda County has four<sup>9</sup> 0.5% county-wide taxes (2%) and four 0.5% city-wide taxes (Albany, Hayward, San Leandro, and Union City). Because these four cities each impose a 0.5% tax, Alameda County has reached the 2% limit.
- Contra Costa County has two 0.5% county-wide taxes (1%) and fourteen city-wide taxes (Antioch (0.5%), Concord (0.5%), El Cerrito (two taxes at 0.5% and 1% for a total of 1.5%), Hercules (0.5%), Moraga (1%), Orinda (0.5%), Pinole (two 0.5% taxes for a total of 1%), Pittsburg (0.5%), Richmond (two 0.5% taxes for a total of 1%), and San Pablo (two taxes at 0.5% and 0.25% for a total of 0.75%). El Cerrito's two taxes totaling 1.5%<sup>10</sup> and Moraga's 1% tax have pushed Contra Costa County to the 2% limit.
- Los Angeles County has three 0.5% county-wide taxes (1.5%) and eleven city-wide taxes (Avalon (0.5%), Commerce (0.5%), Culver City (0.5%), El Monte (0.5%), Inglewood (0.5%), La Mirada (1%), Pico Rivera (1%), San Fernando (0.5%), Santa Monica (0.5%), South El Monte (0.5%), and South Gate (1%). Because the cities of La Mirada, Pico Rivera, and South Gate each impose a tax at rates of 1%, Los Angeles County has reached the 2% limit.
- San Mateo County has three 0.5% county-wide taxes (1.5%) and two city-wide taxes (Half Moon Bay (0.5%) and San Mateo (0.25%)). Because Half Moon Bay imposes a 0.5% tax, San Mateo County is at the 2% limit.
- Marin County has ten district taxes imposed within its borders—three county-wide taxes and seven city-wide taxes. For the three county-wide taxes, the tax rates are 0.25% (two 0.25% taxes) and 0.5% for a total county-wide tax rate of 1%. The seven cities that impose a district tax are Corte Madera, Fairfax, Larkspur, Novato, San Anselmo, and Sausalito, each at a rate of 0.5%, and San Rafael at a rate of 0.75%. Because San Rafael imposes a tax of 0.75%, Marin County is 0.25% shy of the 2% limit.
- While San Diego County only levies one 0.5% district tax, five cities impose their own. National City's 1% rate leaves San Diego County 0.5% shy of the 2% limit.
- Sonoma County has three 0.25% county-wide taxes (0.75%) and eight city-wide taxes (Cotati (1%), Healdsburg (0.5%), Santa Rosa (two 0.25% taxes for a total of 0.5%), Sebastopol (two taxes at 0.25% and 0.5% for a total of 0.75%), and Sonoma (0.5%). Cotati's 1% rate leaves Sonoma County 0.25% shy of the 2% limit.

**4. The Bradley-Burns local sales and use tax rate is limited by statute to 1%.<sup>11</sup>** As previously stated, current law authorizes cities to impose a local sales and use tax rate of up to 0.75%. The city sales and use tax rate is credited against the county rate so that the combined rate does not exceed 1%. Of the 1%, cities and counties use 0.75% to support general operations. The remaining 0.25% is designated by statute for county transportation purposes and restricted to road maintenance or the operation of transit systems. In California, all cities and counties impose Bradley-Burns local taxes at a total uniform rate of 1%. Current law limits the total rate and jurisdictions cannot pass additional taxes under Bradley-Burns to increase the rate. Accordingly, even though this bill, subject to

<sup>9</sup> AB 210 (Ch. 194, Stats. 2013), authorizes Alameda County to levy a district tax not subject to the 2% cap.

<sup>10</sup> AB 1324 (Ch. 795, Stats. 2014) El Cerrito is authorized to levy a tax not subject to the 2% cap.

<sup>11</sup> The Triple Flip ends December 31, 2015. Beginning January 1, 2016, the Bradley-Burns local tax rate will revert from 1% to its original 1.25%, and cities and counties will receive the 0.25% as they did before the Triple Flip began on July 1, 2004.

statewide voter approval, would reduce the vote threshold to 55%, there is no statutory authorization for jurisdictions to increase their rates under Bradley-Burns.

5. **Current voter threshold.** Provisions of the RTC and the PUC currently require a 2/3 vote of the voters to impose a transactions and use tax for special purposes, including taxes that fund local transportation projects. These provisions may also require amendment to reduce the voter threshold to 55% for a local jurisdiction to impose, increase, or extend a transactions use tax to fund local transportation projects.
6. **Related Legislation.** [AB 338](#) (Hernandez) and [SB 767](#) (De Leon) both authorize the Los Angeles Metropolitan Transportation Authority to impose an additional 0.5% district tax for the funding of transportation-related projects and programs. The tax may exceed the existing 2% rate limitation. AB 338 specifies that the 0.5% tax may be imposed for a period not to exceed 30 years; whereas SB 767 allows the Los Angeles Metropolitan Transportation Authority to determine the time period.

Governor Brown recently vetoed [AB 464](#) (Mullin and Gordon), which would have increased the combined rate of all transactions and use taxes imposed in any county from 2% to 3%. In his veto [message](#), the Governor states:

Although I have approved raising the limit for individual counties, I am reluctant to approve this measure in view of all the taxes being discussed and proposed for the 2016 ballot.

**Administrative Costs:** This bill does not increase administrative costs to the BOE. Under current law, if the voters of a city or county approve a tax, that city or county would be required to contract with the BOE and pay for its preparation costs, as well as ongoing service costs to administer the ordinance. However, to the extent that more local tax measures are approved by local voters within a city or county, the BOE will need additional resources to administer new taxes. The BOE will utilize the normal budget change proposal process to obtain the necessary funding when the number of newly approved measures requires additional staff to administer the workload.

**Revenue Impact:** This bill would not affect state revenues. Because the local revenue impact would be specific to each city or county that approved a tax; the revenue impact cannot be estimated.