# STATE BOARD OF EQUALIZATION
# STAFF LEGISLATIVE BILL ANALYSIS

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| Date Amended: | **07/03/03** | Bill No: | **SCA 11** |
| Tax: | **Local taxes** | Author: | **Alarcon** |
| Board Position: | | Related Bills: | **SCA 2 (Torlakson)**<br>**ACA 7 (Dutra)**<br>**ACA 9 (Levine)**<br>**ACA 14 (Steinberg)**<br>**ACA 15 (Wiggins)** |

## BILL SUMMARY

This bill, a constitutional amendment that would require statewide majority voter approval prior to going into effect, would authorize local governments, with the approval of 55 percent of the voters, to impose, extend, or increase a transactions and use tax or to incur indebtedness in the form of general obligation bonds to fund infrastructure projects, including construction of affordable housing for persons of very low, low, and moderate income, transportation enhancement activities, conservation of land for agriculture, recreational, or open-space use, and park maintenance, and general infrastructure.

This bill would also authorize, as an additional exception to the one percent (1%) maximum tax rate on real property, a local government to incur bond indebtedness for the construction of one or more infrastructure projects, as specified, with the approval of a majority of the voters.

***This analysis will not address the local bond indebtedness provision as it does not pertain to the State Board of Equalization.***

### Summary of Amendments

Since the previous analysis, this bill was amended to change the voter approval threshold from a majority approval to a 55 percent approval of the voters.

## ANALYSIS

### Current 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 transactions 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, which is placed into a general fund. Under Section 2, of Article XIII C, a local government may impose a general tax by a majority of the voters, and impose a special tax by two-thirds of the voters. Also under Section 2, of Article XIII C, special purpose districts or agencies, including school districts, have no power to levy general taxes.

*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 Board's formal position.*

The **Bradley-Burns Uniform Local Sales and Use Tax Law** (Part 1.5, Division 2, Revenue and Taxation Code) authorizes counties and cities to impose a local sales and use tax. The local sales tax is imposed on all retailers for the privilege of selling tangible personal property at retail; the local use tax is imposed on the storage, use, or other consumption of tangible personal property purchased from any retailer.

Currently, the statewide sales and use tax and local tax rate is 7.25 percent. Of the 7.25 percent base rate, 6 percent is the state portion and 1.25 percent is the local portion. The components of the statewide base sales and use tax rate of 7.25 percent are as follows:

- 5 percent state tax is allocated to the state's General Fund (Section 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code);
- 0.50 percent state tax is allocated to the Local Revenue Fund which is dedicated to local government for program realignment (Section 6051.2 and Section 6201.2 of the Revenue and Taxation Code);
- 0.50 percent state tax is allocated to the Local Public Safety Fund which is dedicated to local governments to fund public safety services (Section 35 of Article XIII of the California Constitution);
- 1.25 percent local tax of which 1 percent is allocated to city and county operations and 0.25 percent is allocated for county transportation purposes and may be used only for road maintenance or the operation of transit systems (commencing with Section 7200 of the Revenue and Taxation Code).

As previously stated, under the Bradley-Burns Law, the local tax portion is fixed at 1.25 percent. All counties within California have adopted ordinances under the terms of the Bradley-Burns Law and levy the 1.25 percent local tax. Cities are also authorized to impose a sales and use tax rate of up to 1 percent, which is credited against the county rate so that the combined local tax rate under the Bradley-Burns Law does not exceed 1.25 percent.

Under the **Transactions and Use Tax Law** (Parts 1.6 and 1.7, Division 2, Revenue and Taxation Code) counties are authorized to impose a transactions and use tax at a rate of 0.25 percent, or a multiple thereof, if the ordinance imposing such tax is approved by the voters. The transactions and use taxes are additional sales and use taxes imposed on the sale or use of tangible personal property. The maximum allowable combined rate of transactions and use taxes levied in any county may not exceed 1.50 percent, with the exception of the City and County of San Francisco and the County of San Mateo, whose combined rates may not exceed 1.75 and 2 percent, respectively.

Section 7285 of the Transactions and Use Tax Law additionally authorizes counties to levy a transactions and use tax at a rate of 0.25 percent, or multiple thereof, for general purposes with the approval of a majority of the voters. Section 7285.5 permits the board of supervisors of any county to levy a transactions and use tax at a rate of 0.25 percent, or multiple thereof, for specific purposes with the approval of two-thirds of the voters.

In addition, Section 7286.59 authorizes counties to levy a transactions and use tax at a rate of 0.25 percent, or multiple thereof, for purposes of funding public libraries with approval of two-thirds of the voters. And Section 7288.1 authorizes counties to establish a local public finance authority to adopt an ordinance to impose a transactions and use tax at a rate of 0.25 percent, or multiple thereof, for purposes of funding drug abuse prevention, crime prevention, health care services, and public education with the approval of two-thirds of the voters.

As stated previously, Sections 7285, 7285.5, 7286.59, and 7288.1 authorize counties to levy transactions and use taxes under specified conditions. There is no such authority for cities to impose these taxes. Any city desiring to impose a transactions and use tax must seek special enabling legislation from the California legislature. There are 22 cities that have gained authorization to impose transactions and use taxes, 10 of which gained authorization during the 2002 legislative year. To date, only 9 cities (Avalon, Calexico, Clearlake, Clovis, Placerville, Sebastopol, Truckee, West Sacramento, and Woodland) have received voter approval and are levying a transactions and use tax.

The Board performs all functions in the administration and operations of the ordinances imposing the Bradley-Burns Uniform Local Sales and Use Tax and the Transactions and Use Taxes and all local jurisdictions imposing these local taxes are required to contract with the Board for administration of the taxes.

## Proposed Law

This bill would amend Section 2 of Article XIII C of the California Constitution to allow a local government, with the approval of 55 percent of its voters, to impose, extend, or increase a transactions and use tax that is imposed exclusively for purposes of funding all of the following:

1) Construction of affordable housing for persons of very low, low, and moderate income, as defined by Section 50052.5 of the Health and Safety Code;
2) Transportation enhancement activities, as defined in Section 101 of Title 23 of the United States Code, including transit infrastructure, maintenance and operations, and improvements to ensure compliance with laws governing access for persons with disabilities under state and federal law, and streetscape improvements;
3) Conservation of land dedicated to agricultural, recreational, or open-space use, and the maintenance of neighborhood parks; and,
4) General infrastructure.

The revenues derived from such tax shall be used for the above four purposes in equal amounts of at least 20 percent each, with the remaining revenues used for these purposes. No more than 5 percent of the revenue balance could be used for administrative costs. With respect to revenues used for affordable housing, not more than 30 percent of the 20 percent allocated may be used to provide affordable housing for persons of moderate-income households.

This bill would provide that a transactions and use tax imposed under the provisions of this bill shall be imposed in accordance with Part 1.6, Division 2 of the Revenue and Taxation Code.

This bill would also amend Section 4 of Article XIII A and Section 3 of Article XIII D, to conform to the provisions that amend Section 2 of Article XIII C.

This bill would also amend Section 18 of Article XVI, to authorize a local government, with the approval of a majority of the voters, to incur indebtedness in the form of general obligation bonds for the same purposes as specified under the proposed amendments to Section 2 of Article XIII C (affordable housing, transportation enhancement, conservation of land dedicated to agriculture, recreation, or open-space, and general infrastructure).

This Constitutional amendment must be approved by a majority of California voters. Upon passage in the Senate and Assembly, this bill would be put on the next statewide ballot.

**Background**

Proposition 62, passed by the voters on November 4, 1986, established new requirements for the adoption of new or higher general and special taxes by local agencies. The measure specifically required that any tax for general purposes be approved by a majority of the voters and that any tax for specific purposes be approved by two-thirds of the voters.

In September 1995, the California Supreme Court upheld Proposition 62's voter approval requirements for local taxes. In the decision, *Santa Clara County Local Transportation Authority v. Guardino* (1995), the California Supreme Court upheld the two-thirds voter approval provision of Proposition 62. This decision raised important implications for other special (transportation) districts that passed transactions and use tax measures by a majority vote. Most of these measures were passed between 1987 and 1991, and contained sunset provisions (the majority were authorized for a 20 year period), which required voter reauthorization if the taxes were to remain in effect. The sunset dates of these taxes range between 2005 to 2011 (See Comment 2).

Additionally, in 1991 and 1992, two court decisions declared that measures passed by the voters of San Diego and Monterey counties, which imposed a special purpose tax, required a two-thirds vote for passage. In the decision, *Rider v. County of San Diego* (1991), the California Supreme Court held that the Agency (San Diego County Regional Justice Facility Financing Agency) was a special district and the transactions and use tax imposed was a special tax. Consequently, the court ruled that the imposition of the tax violated Proposition 13 which requires approval of the tax by at least two-thirds of the voters.

In the decision, *Monterey Peninsula Taxpayers Association v. County of Monterey* (1992), the First District Court of Appeal ruled that a tax adopted under Revenue and Taxation Code Section 7285.5 was in violation of Proposition 13. Section 7285.5 (subsequently amended) had authorized a county to establish an authority for specific purposes that could levy a transactions and use tax with a majority voter approval. The court found that a tax adopted under Section 7285.5, without approval of two-thirds of the voters, violated Proposition 13. Sections 7285 and 7285.5 were amended (AB 1123, Ch. 251, 2001) to add language clarifying the following: (1) Section 7285 authorizes counties to levy a transactions and use tax for general purposes; and (2) Section 7285.5 deletes the necessity of forming an authority to levy a transactions and use tax for special purposes, and requires two-thirds voter approval of a special purpose tax.

SCA 13 (Alarcon) introduced during the 2001-2002 Legislative session would have authorized local governments, with a majority voter approval, to impose a special tax to fund projects related to transportation and other local development. This bill also would have authorized local governments, with a majority voter approval, to incur indebtedness in the form of general obligation bonds to fund the construction of affordable housing for persons and families of low and moderate income. The bill was not heard in any committee.

**COMMENTS**

1. **Sponsor and purpose.** This bill is sponsored by the author in an effort to lower the voter approval requirement from a two-thirds vote to a majority vote for special taxes and general obligation bonds in order to fund infrastructure projects.

   According to the author's staff, California's population is expected to double in the next 20 years and local governments are faced with major financial burdens to finance a variety of infrastructure maintenance and improvements to accommodate this expected growth. They estimate the backlog of unmet repair needs for city streets and county roads alone to be $11 billion. California ranks third to last in the nation in housing affordability and has a serious shortfall in funding for affordable housing. Communities are calling for greater investments in bicycle and pedestrian facilities and traffic safety improvements to make their neighborhoods and town centers more safe and walkable. California is the largest agricultural producer in the nation; additional investments are needed to support California's agricultural economy as well as protect its resource lands and open space.

   According to the author's staff, SCA 11 gives communities new flexible tools to address a variety of infrastructure needs, and it would do so in a manner that is fair and equitable, environmentally sound and promotes efficient, well-planned development. The author's staff also indicated that this bill would not change or replace the special transportation-only taxes that local governments, with the approval of two-thirds of the qualified voters, are authorized to impose under current law.

2. **Key amendments.** The **July 3, 2003 amendments** changed the voter approval requirement from a majority to a 55 percent approval of the voters. The **June 23, 2003 amendments** clarified that a tax imposed under the provisions of this bill is a transactions and use tax. The amendments also changed the allocation formula to do the following: (1) reduced the allocation percentages from 25 percent to 20 percent; (2) provided that 20 percent would be allocated for general infrastructure needs; and (3) provided that the remaining revenues would be allocated among the four areas (i.e., affordable housing, transportation enhancement activities, conservation of land for agricultural, recreational, or open-space use and park maintenance, and general infrastructure). The **May 13 amendments** to this bill moved provisions contained under a newly created section of Article XI, to the existing Section 2 of Article XIII C of the California Constitution. This bill was also amended to authorize local governments to, in addition to imposing a special tax, to extend or increase a special tax to fund local infrastructure projects with a majority voter approval.

3. **Currently, there are 17 counties that impose a county-wide transactions and use tax for transportation purposes.** Many of these counties' transactions and use tax measures were approved by a majority vote. Of the 17 counties, 14 had measures that contained sunset provisions. The sunset dates of these taxes range from 2005 to 2011, with the exception of Alameda County. The Alameda County Transportation Authority transactions and use tax expired on March 31, 2002, however, voters in Alameda County approved (by a two-thirds vote) the Alameda County Transportation Improvement Authority transactions and use tax effective April 1, 2002, with a sunset date of March 31, 2022. Voters of Riverside County approved (by a two-thirds vote) an extension of the existing Riverside County Transportation Commission transactions and use tax from June 30, 2009, to June 30, 2039.

4. **This bill could change the voter approval requirement for local taxes.** This bill would amend the state Constitution to require a 55 percent voter approval to pass a transactions and use tax, as specified. This Constitutional amendment must be approved by a majority of California voters before the new voter-approval threshold could go into effect.

5. **Related Legislation.** Five bills introduced in 2003 would place on the ballot a constitutional amendment to change the voter approval requirement for local taxes. **SCA 2 (Torlakson)** would constitutionally authorize counties, cities and counties, local transportation authorities, and regional transportation agencies, with the approval of a majority of the voters in the jurisdiction, to impose a transactions and use tax to be used exclusively for funding transportation projects and services and related smart growth planning.

   **ACA 7 (Dutra)** would constitutionally authorize a local transportation agency and a regional transportation agency, with the approval of 55 percent of the voters in the jurisdiction, to impose a transactions and use tax for a period of 20 to 30 years, as specified, at a rate of 0.50 percent to be used exclusively for transportation purposes. **ACA 9 (Levine)** would constitutionally authorize a city, county, or special district to impose a qualified special tax, as defined, to fund capital infrastructure construction projects, with the approval of a majority of the voters. **ACA 14 (Steinberg)** would constitutionally authorize a local government, with a 55 percent approval of the voters, to impose a transaction and use tax to fund local infrastructure projects, including general infrastructure, construction of emergency shelters and affordable housing, conservation of agricultural and open-space land, and neighborhood enhancement activities. **ACA 15 (Wiggins)** would constitutionally authorize local governments, with the approval of a majority of the voters, to impose a special tax to fund local public safety departments, as defined.

## COST ESTIMATE

This bill by itself would not result in additional costs to the Board. Under the Uniform Local Sales and Use Tax Law and the Transactions and Use Tax Law, counties are required to contract with the Board, and reimburse the Board for its preparation costs to administer the ordinance as well as the costs for the Board's ongoing services in actually administering the ordinance.

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**REVENUE ESTIMATE**

To the extent that this bill makes it easier for local governments to impose or extend local taxes, this bill, if approved statewide, would increase local government revenues. The revenue impact would be specific to each local government that approved a tax.


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