STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	**04/21/03**	Bill No:	**ACA 9**
Tax:	**Local taxes**	Author:	**Levine**
Board Position:		Related Bills:	**ACA 7 (Dutra)** **ACA 14 (Steinberg)** **ACA 15 (Wiggins)** **SCA 2 (Torlakson)** **SCA 11 (Alarcon)**

BILL SUMMARY

This bill, a constitutional amendment that would require statewide majority voter approval prior to going into effect, would authorize a city, county, or special district to impose a qualified special tax, as defined, to fund capital infrastructure construction projects, with a majority voter approval.

Summary of Amendments

Since the previous analysis, this bill was amended to delete the provisions that changed the voter approval requirements for general purpose and special purpose taxes, and instead provides that cities, counties, or special districts may impose a qualified special tax, as defined, to fund capital infrastructure construction projects, with a majority voter approval.

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, subdivision (a), of the California Constitution**, “General tax” means any tax imposed for general governmental purposes. Under Section 1, subdivision (b) of Article XIII C, a "local government" is defined as any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity. Under Section 1, subdivision (d) of Article XIII C, a “special tax” means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund.

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Under Article XIII C, Section 2, subdivision (b), of the California Constitution, a local government may impose a general tax by a majority of the voters. Under Section 2, subdivision (d) of Article XIII C, a local government may impose a special tax by two-thirds of the voters.

Under **Article XIII D, Section 3, subdivision (a)(2), of the California Constitution,** no tax, assessment, fee, or charge shall be assessed by any agency on any parcel of property or on any person as an incident of property ownership except: (1) the ad valorem property tax imposed pursuant to Article XIII and Article XIII A; (2) any special tax receiving a two-thirds vote pursuant to Section 4 of Article XIII A; (3) assessments as provided by this article; and (4) fees or charges for property-related services as provided by this article.

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.

The tax rate is fixed at 1¼ percent of the sales price of tangible personal property sold at retail in the county, or purchased outside the county for use in the county. Of the 1¼ percent, counties and cities use the 1 percent portion to support general operations. The remaining ¼ percent is earmarked for county transportation purposes and may be used only for road maintenance or the operation of transit systems.

Counties within California have adopted ordinances under the terms of the Bradley-Burns Law and levy the 1¼ percent local tax. Cities are also authorized to impose a local 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 1¼ 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 a tax is approved by the voters.

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.

Section 7288.1 also allows counties to establish a Local Public Finance Authority to adopt an ordinance to impose a transactions and use tax rate of 0.25 percent, or multiple thereof, for purposes of funding drug abuse prevention, crime prevention, health care services, and public education upon two-thirds voter approval. Finally, Section 7286.59 allows counties to levy a transactions and use tax rate of 0.125 or 0.25

percent for purposes of funding public libraries, upon two-thirds voter approval.

Also, under the Transactions and Use Tax Law, through specific legislation, some cities have been authorized to levy a transactions and use tax for either a general tax or a special purpose tax. Currently, there are 40 districts (cities, counties, special districts) that levy a transactions and use tax with tax rates ranging from 0.125 percent to 0.50 percent.

Proposed Law

This bill would add Section 4.5 to Article XIII A to provide that a city, county, or special district, with the approval of a majority of the voters, may impose a qualified special tax that meets all of the following requirements:

- The measure proposing the tax provides that the tax revenues would fund a specified capital infrastructure construction project(s);
- The measure proposing the tax specifies either of the following: (1) that the tax will be imposed only during a specified time period; or (2) that the tax will be imposed only until such tax generates revenues that do not exceed 25 percent of the total estimated cost of the capital infrastructure construction projects(s);
- The measure proposing the tax provides a method by which a taxpayer receives a proportional refund of the taxes paid by that taxpayer for any revenues generated by the tax that exceed the final cost of the capital infrastructure construction project(s).

This bill would also amend Section 3 of Article XIII D to conform to the proposed language in Section 4.5 of Article XIII A.

This Constitutional amendment must be approved by a majority of California voters. Upon passage in the Assembly and Senate, 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 had sunset provisions (the majority were authorized for a 20 year period), which requires voter reauthorization if the taxes are to remain in effect.

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, failed to get

the required two-thirds vote. 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. Since the Agency was a special district and the transactions and use tax it imposed was special tax, 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. Revenue and Taxation Code 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.

Proposition 218, passed by the voters on November 5, 1996, added Articles XIIIC and XIIID to the California Constitution. Proposition 218 requires, among other things, that (1) any tax imposed for general governmental purposes must be approved by a majority of the voters (including taxes imposed by chartered cities); (2) any tax imposed for specific purposes must be approved by two-thirds of the voters; (3) any tax imposed for a specific purpose is a "special tax," even if the funds are placed into a general fund; and (4) special purpose districts or agencies, including school districts, shall have no power to levy general taxes.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author. According to the author's staff, the funding of general taxes and special taxes can be viewed as using a blank check to pay for general taxes or using a filled-out check to pay for special taxes. Based on this viewpoint, it seems appropriate that a blank check should require a greater vote (i.e., two-thirds) and a filled-out check should require a lesser vote (i.e., majority). The author's staff also stated that it is the author's intent that this bill help local governments to pass or extend general taxes and special taxes.

2. **Summary of April 21 amendments.** Amendments to this bill deleted the provisions that changed the voter approval requirement for general and special taxes, and instead provide that a city, county, or special district may impose a "qualified special tax," as defined, with a majority voter approval. A "qualified special tax" means a tax that meets the following conditions: (1) the measure proposing the tax limits the use of the tax revenues to fund a specified capital infrastructure construction project(s); (2) the measure proposing the tax specifies either that the tax will be imposed during a specified time period, or that the tax will be imposed until such tax generates revenues that do not exceed 25 percent of the total estimated cost of the capital

infrastructure construction project(s); and (3) the measure proposing the tax provides a method by which a taxpayer receives a proportional refund of the taxes paid by that taxpayer for any revenues generated by the tax that exceed the final cost of the capital infrastructure construction project(s).

3. **Currently, there are 40 local jurisdictions (districts) imposing transactions and use taxes for special purposes and general purposes.** Of these 40 jurisdictions, 35 levy a tax for specific purposes and 5 levy a tax for general governmental purposes. Of the 35 special purpose taxes, 17 represent counties that established transportation authorities to levy a transactions and use tax for transportation purposes. The majority of these 17 counties passed transactions and use tax measures 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. Voters in Alameda County approved 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.

6. **Related Legislation.** Six bills introduced in 2003 would place on the ballot a constitutional amendment to change the voter approval requirement for special taxes. **ACA 7 (Dutra)** would constitutionally authorize local transportation agencies and regional transportation agencies, 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 14 (Steinberg)** would constitutionally authorize local governments, with the approval of 55 percent of the voters, to impose a special 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 improvements. **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.

   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. **SCA 11 (Alarcon)** would constitutionally authorize local governments, with the approval of a majority of the voters, to impose a special 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, acquisition of land for open-space use, and other general infrastructure needs.

COST ESTIMATE

This bill by itself would not result in additional costs to the Board. Counties and cities are required to contract with the Board to perform functions related to the local tax ordinances, 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.

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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