



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

DRAFT

Date:	08/28/13	Bill No:	Senate Constitutional Amendment 4
Tax Program:	Transactions and Use	Author:	Liu
Sponsor:	Author	Code Sections:	Section 4, Article XIII A; Section 2, Article XIII C
Related Bills:	SCA 7 (Wolk) SCA 8 (Corbett) SCA 9 (Corbett) SCA 11 (Hancock)	Effective Date:	Upon approval of voters at November 2014 General Election

BILL SUMMARY

This constitutional amendment reduces from 2/3 to 55%, the vote threshold required for local governments to impose, extend, or increase a special tax, including local transactions and use taxes, to fund local transportation projects.

Summary of Amendments

Since the previous analysis, this bill was amended to require expenditures for sustainable communities strategy programs or purposes, and dedicated maintenance spending on any state highway system expansion project.

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 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-thirds vote of the voters. In addition, Section 2 provides that special purpose districts or agencies, including school districts, 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 provided in separate parts of the Revenue and Taxation Code (RTC). In addition, the Public Utilities Code (PUC) authorizes counties to establish transportation authorities and impose transactions and use taxes for transportation purposes. Transactions and use tax ordinances imposed under the PUC must conform to the Transactions and Use Tax Law. The following explains the

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local sales and use taxes administered by the BOE.

The **Bradley-Burns Uniform Local Sales and Use Tax Law** (Part 1.5, commencing with Revenue and Taxation Code Section 7200), authorizes cities and counties to impose a local sales and use tax (local taxes). The law requires that the rate of tax be 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 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 may be used only for road maintenance or the operation of transit systems. 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. Currently, all cities and counties in California impose these local taxes at the uniform rate of 1%.

The **Transactions and Use Tax Law** ((Part 1.6, commencing with Revenue and Taxation Code Section 7251) and the Additional Local Taxes Law (Part 1.7, commencing with Section 7280) authorize cities and counties to impose transactions and use taxes (district taxes) under specified conditions. Counties are authorized to impose a district tax for general purposes and special purposes at a rate of 0.125%, or multiples of 0.125%, if the ordinance imposing the tax is approved by the required percentage of voters in the county. Cities also are authorized to impose a district tax for general purposes and special purposes at a rate of 0.125%, or multiples of 0.125%, if the ordinance imposing the tax is approved by the required percentage of voters in the city. Under these laws, the combined rate of these district taxes imposed in any local jurisdiction cannot exceed 2% (with one exception in Los Angeles County¹).

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 and majority of county voters	RTC 7285
County	Specific Purpose tax (expenditure plan required)	2/3 vote of Board of Supervisors and 2/3 vote of county voters	RTC 7285.5
City	General Purpose tax	2/3 vote of City Council and majority of city voters	RTC 7285.9
City	Specific Purpose tax (expenditure plan required)	2/3 vote of City Council and 2/3 vote of city voters	RTC 7285.91

¹ In 2003, SB 314 (Chapter 785, Murray) authorized the Los Angeles Metropolitan Transportation Authority to impose a 0.50% district tax for specific transportation projects, and excluded that 0.50% tax from the 2% combined rate limitation established by RTC 7251.1. In 2008, voters within Los Angeles County approved the additional 0.50% effective July 1, 2009, which raised the tax rate in the cities of South Gate and Pico Rivera to 10%. Effective April 1, 2013, the tax rate in the City of La Mirada (in Los Angeles County) also will be 10%.

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Local Jurisdiction	Purpose	Voter Approval Threshold	Code Section
County Transportation Authority ²	Transportation tax (expenditure plan required)	2/3 vote of Transportation Authority and 2/3 vote of county voters	PUC Divisions 10-25

Cities, counties, and special purpose entities are required to contract with the BOE to perform all functions in the administration and operations of the ordinances imposing the local and district taxes.

PROPOSED LAW

This bill amends Section 2 of Article XIII C of the California Constitution to allow a local government, with the approval of 55% of its voters, to impose, extend or increase a special tax to fund local transportation projects. The ballot measure proposing the tax must include all of the following:

- A specific list of programs and purposes to be funded, with proceeds spent solely for those programs and purposes.
- An annual independent audit of the tax proceeds collected and expended and the specified purposes and programs funded.
- A citizens' oversight committee to review all expenditures of proceeds and financial audits and report its findings to the governing board and public.

The ballot measure proposing the tax must also require that at least 50% of the tax proceeds be spent for sustainable communities strategy programs and purposes. The measure must also require that any tax proceeds spent on a state highway system expansion project must dedicate a portion of those proceeds for the project's ongoing maintenance.

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

Additionally, this bill requires a local government that previously imposed a special transportation tax under a 2/3 vote to first complete capital projects funded by that tax before spending proceeds from a tax approved by 55% of the voters.

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

PRIOR LEGISLATION

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
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.

² Some jurisdictions 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).

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Session	Bill	Summary
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.
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.

COMMENTS

- 1. Sponsor and Purpose.** This bill is sponsored by the author in an effort to lower the voter approval requirement to enhance local governments' ability to meet the voter approval requirements to pass local tax measures to fund local transportation projects.
- 2. The August 28, 2013 amendments** require that (1) at least 50% of the tax proceeds be expended for sustainable communities strategy programs or purposes, and (2) any tax proceeds spent to expand the state highway system must dedicate a portion for ongoing maintenance. **The May 21, 2013 amendments** added provisions to require the local proposition to include specific, detailed information, and add a coauthor. **The March 19, 2013 amendments** required a local government that previously approved a tax under a 2/3 vote to first complete capital projects funded by that tax before spending proceeds from a 55% approved tax.
- 3. District taxes currently administered by the BOE.** Beginning April 1, 2013, 169 local jurisdictions (city, county, and special purpose entity) will impose a district tax for general and special purposes. Of the 169 jurisdictions, 43 have county-imposed taxes and 126 have city-imposed taxes. Three of the 43 county-imposed taxes are

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general purpose taxes and 40 are special purpose taxes. Twenty-eight of the 40 special purposes taxes are imposed for transportation purposes.

Of the 126 city-imposed taxes, 94 are general purpose taxes and 32 are special purpose taxes. Six of the 32 special purpose taxes are imposed for transportation purposes.

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. Currently, the district tax rates vary from 0.10% to 1%. The combined state, local, and district tax rates range from 7.625 to 9.50%, with the exception of the cities of South Gate, Pico Rivera, and La Miranda (10%) in Los Angeles County.

- 4. 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 special 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 approach or reach the 2% cap. Thus, legislation may be introduced to increase the 2% limitation.

- 5. Cities and counties continue to seek voter approval of district taxes.** In 2012, cities and counties placed a total of 47 district tax measures on both the June 5 Presidential Primary Election and November 6 General Election ballots. Of the 47 district tax measures, 11 were county measures and 36 were city measures.

With respect to counties, eight of the 11 measures were special tax measures and three were general tax measures. Three of the eight special tax measures were for transportation purposes. Two of the failed measures were 0.14% and 3.69% shy, respectively, of the 66.67% threshold needed for passage. All of the special transportation tax measures would have passed under a 55% vote requirement.

County	Purpose	Results	% Vote Received (% Required)
Alameda	Transportation	Fail	66.53 (66.67)
Fresno	Library	Pass	72.99 (66.67)
Lake	Clear Lake restoration	Fail	62.98 (66.67)
Los Angeles	Transportation	Fail	66.11 (66.67)
Marin	Open Space	Pass	74.37 (66.67)
Napa	Transportation	Pass	74.77 (66.67)
Plumas	General	Fail	35.94 (50.00)
San Mateo	General	Pass	65.39 (50.00)
Santa Clara	General	Pass	56.61 (50.00)
Solano	Library	Pass	80.10 (66.67)
Stanislaus	Library	Pass	81.93 (66.67)

With respect to cities, four of the 36 measures were special tax measures and 32 were general tax measures. Of the four special tax measures, only one was for transportation purposes. It received 61.72% of the vote, 4.59% short of passage.

- 6. 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 and use tax to fund local transportation projects.
- 7. Related legislation.** SCA 8 (Corbett) would similarly authorize local governments, with the approval of 55% of the voters, to impose, extend, or increase a special tax, which would include a district tax, to fund transportation projects.

Other measures to lower the vote threshold for local taxes include SCA 7 (Wolk), related to public library funding, and SCA 9 (Corbett), which authorizes an economic development tax authority. SCA 11 (Hancock) would lower the vote threshold for any special purpose tax.

COST ESTIMATE

This bill would not result in additional costs to the BOE. Under the Transactions and Use Tax Law, cities and counties are required to contract with and reimburse the BOE for both preparation and administrative costs associated with the BOE's ongoing services in administering the ordinance. However, to the extent that more local transportation measures are approved by local voters, the BOE will need additional resources to administer the 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 ESTIMATE

This bill would not affect state revenues.

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