



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

DRAFT

Date:	03/24/14	Bill No:	<a href="#">Assembly Bill 2109</a>
Tax Program:	Property	Author:	Daly
Sponsor:	CA Taxpayers' Association	Code Sections:	GC 15616
Related Bills:	<a href="#">Assembly Bill 892</a> (Daly)	Effective Date:	01/01/15

**BILL SUMMARY**

This bill requires the Board of Equalization (BOE) to annually report to the Governor specified information about locally-imposed “parcel” taxes.

**Summary of Amendments**

Since the prior analysis, the bill was amended to substitute the county auditor for the county tax collector.

**ANALYSIS**

**CURRENT LAW**

Existing law<sup>1</sup> allows local agencies to impose a special tax with two-thirds voter approval.<sup>2</sup> Following a public hearing, the local agency’s legislative body may enact an ordinance or resolution and place it on the ballot. The ordinance or resolution details the tax type and the tax rate.<sup>3</sup> While a local agency may levy a special tax against a parcel of property, California law does not define the term “parcel tax.” Thus, for purposes of this analysis, a “parcel tax” means a special tax imposed on any parcel of property or upon any person as an incident of property ownership.

The Local Agency Special Tax and Bond Accountability Act (Act)<sup>4</sup> requires the local agency’s chief fiscal officer to file an annual report with the agency’s governing body detailing the amount of special tax revenue the agency has collected and expended.<sup>5</sup> The Act requires other accountability measures including:

- (1) A statement indicating the specific purpose of the special tax;
- (2) A requirement that the local agency apply the tax proceeds only to those specific purposes; and
- (3) The creation of a special account in which to deposit the proceeds.<sup>6</sup>

The Act<sup>7</sup> requires, in part, that the local agency’s chief fiscal officer file an annual report with the agency’s governing body detailing the amount of special tax revenue the agency has collected and expended.<sup>8</sup> The uncodified findings and declarations state:

<sup>1</sup> California Constitution Article XIII A [Sec. 4](#), and [Article 3.5](#) (commencing with Government Code (GC) Section 50075). The GC provides for various types of special taxes including taxes for: schools (GC Section [50079](#)); public libraries (GC Section [53717 et seq.](#)); fire and police protection (GC Section [53978](#)); hospitals (Public Resources Code Section [53730.01](#)); recreation and park districts (Public Resources Code Section [5789.1](#)); and community facilities districts (i.e., Mello Roos, GC Section [53321](#)).

<sup>2</sup> California Constitution Article XIII A, [Sec. 4](#), Article XIII C, [Sec. 2](#).

<sup>3</sup> GC Section [50077](#)

<sup>4</sup> [Article 3.5](#) (commencing with Government Code (GC) Section 50075, [Stats. 2000, Ch. 535 \(SB 165\)](#))

<sup>5</sup> GC Section [50075.3](#)

<sup>6</sup> GC Section [50075.1](#)

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(a) This act shall be known and may be cited as the Local Agency Special Tax and Bond Accountability Act.

(b) The Legislature finds and declares that the California Constitution requires the voters of local agencies to approve the levy of special taxes and many forms of bonded indebtedness. These special taxes and bonds can be important sources of funding for local agencies' public facilities and public services. Earning the voters' confidence to support special taxes and bonds requires local agencies to demonstrate to the voters that they spend these funds on the intended facilities and services.

(c) The Legislature further finds and declares that the procedures for local agencies to obtain voter approval of special taxes and bonded indebtedness affect the general welfare of all Californians.

Accordingly, the Legislature finds and declares that the procedures created by this act constitute an issue of statewide concern and not merely a municipal affair. Therefore, the Legislature intends that the procedures created by this act shall apply to all local agencies, including charter cities.

The State Controller's Office (SCO) compiles and publishes information about local agencies' finances, including their revenue sources, based on financial information counties, cities, and special districts submit to the SCO. Per statute,<sup>9</sup> the SCO [reports and posts](#) this information online.

The BOE does not collect, nor does it have direct access to, information regarding locally-imposed special taxes levied on any parcel of property or upon any person as an incident of property ownership.

#### PROPOSED LAW

**Annual report.** This bill requires the BOE to report annually to the Governor the following information about every locally imposed "parcel" tax:

- Type and rate.
- Number of parcels subject to the tax.
- Number of parcels exempted.
- Sunset date, if any.
- Revenue collected.

**County auditors.** County auditors are required to provide any information the BOE may require in order for the BOE to annually comply with the bill's reporting requirements.

**Regulations.** The bill requires the BOE to adopt regulations prescribing the format for auditors to use when submitting the required information.

**Funding.** The BOE must collect, analyze, and publish this data using existing funds or resources.

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<sup>7</sup> [Article 3.5](#) (commencing with Government Code (GC) Section 50075, [Stats. 2000, Ch. 535 \(SB 165\)](#))

<sup>8</sup> GC Section [50075.3](#)

<sup>9</sup> GC Section [12463](#)

## BACKGROUND

The California Constitution specifies that only two types of taxes may be imposed upon a parcel of property:

- (1) An ad valorem property tax (a tax based on property value) imposed pursuant to Article XIII and Article XIII A; and
- (2) A special tax that has received two-thirds voter approval pursuant to Section 4 of Article XIII A.

Furthermore, Article XIII A limits the ad valorem tax rate to 1%. Accordingly, a local agency must adopt a parcel tax as a special tax that is not based on the property's value (ad valorem).

Section 3 of Article XIII D, provides that no **tax**, assessment, fee, or charge shall be assessed by any agency **upon any parcel of property or upon 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 Article XIII D.
- (4) Fees or charges for property related services as provided by Article XIII D.

## COMMENTS

1. **Sponsor and purpose.** The California Taxpayers' Association (CalTax) is sponsoring this bill to promote the transparency of locally-imposed parcel taxes. In March of 2013, CalTax prepared a policy brief: [THE OTHER PROPERTY TAX An Overview of Parcel Taxes in California](#) detailing the association's concerns with local governments that impose parcel taxes. The sponsor states that no statewide data exists concerning parcel taxes. Further, they argue there is no statewide oversight of local agencies that submit parcel taxes to their voters for approval.
2. **The March 24, 2014 amendments** substituted the county auditor for the county tax collector.
3. **The Legislative Analyst's Office (LAO) noted the lack of a statewide data source.** On November 29, 2012, the LAO issued a report entitled, [Understanding California's Property Taxes](#). Related to parcel taxes, the LAO notes:
 

Recent election reports and financial data suggest that parcel taxes represent a significant and growing source of revenue for some local governments. Specifically, between 2001 and 2012, local voters approved about 180 parcel tax measures to fund cities, counties, and special districts, and about 135 measures to fund K-12 districts. The most recent K-12 financial data (2009-2010) indicate that schools received about \$350 million from this source. We were not able to locate information on the statewide amount of parcel tax revenue collected by cities, counties, and special districts.
4. **This bill does not impose upon the BOE any oversight obligation related to locally-imposed parcel taxes.** The BOE only reviews county assessors' assessment (valuation) procedures, while the SCO reviews county property tax collection and allocation procedures. This bill requires the BOE to provide statewide information limited in scope to locally-imposed parcel taxes. As the LAO indicates,

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no such statewide database exists. The detailed financial statement each local agency prepares and provides to the SCO for publication appears to include parcel tax revenues under the item “other taxes.”

5. **Tax Auditor and BOE reporting should be limited to those local agencies that impose a parcel tax that is invoiced on the annual property tax bill.** This bill requires county auditors to provide the information the BOE needs to prepare the annual report. But, county auditors would only have parcel tax information for parcel taxes collected via the annual property tax bill. An online search of local agency contracts suggests that local agencies that contract with the county to collect the tax via the county’s annual property tax bill provide some of this information to the county auditor-controller. The county requires the information in order to submit the tax on the county tax rolls.

For example, the county requires a list of assessor parcel numbers and the amount of each tax required to be collected. It appears that some local agencies use a third-party consultant or contractor to prepare this information for the county. We note that a special tax imposed on a parcel need not be collected via the annual property tax bill. A local agency may use other collection methods, such as directly billing the property owner or contracting with a third party collector. The following amendment is suggested:

The board shall not be required to report the information for any county if the auditor of that county did not provide the information to the board as required by this bill.

6. **Approximately 3,800 local governments could impose a parcel tax making statewide monitoring challenging.** Voters could approve parcel taxes in a municipal local election without widespread publicity, such as a local election held off-cycle from a general or special election. For this reason, this bill’s reporting requirements will help to ensure the annual report’s completeness.
7. **“Parcel tax” definition needed.** This bill should define “parcel tax” to provide clarity to the BOE and auditors on the scope of the data collection. While the term “parcel tax” is commonly used, the tax code does not appear to define it explicitly. Since a parcel tax must be adopted as a special tax, we suggest “parcel tax” for purposes of this bill be defined as follows:

“Parcel tax” means a tax levied by a local agency upon any parcel of property identified using the assessor’s parcel number system or upon any person as an incident of property ownership pursuant to Section 4 of Article XIII A of the California Constitution that is collected via the annual property tax bill.

The property tax bill includes numerous charges, assessments, and fees. Taxpayers could view these other items as “parcel taxes” since they are imposed/levied on their parcel. The bill should expressly state that the BOE is not required to compile and annually report other assessments, fees, or charges imposed on parcels as follows:

The board shall not be required to report information on community facility district special taxes or other assessments, fees, or charges imposed on parcels that are collected via the annual property tax bill.

The bill should also expressly exclude Mello Roos special taxes for community facility districts, which are also imposed on parcels. Neither the Cal Tax Policy brief nor the LAO report categorize Mello Roos taxes as a “parcel tax.” Landowners usually vote to approve Mello Roos taxes prior to property development. The taxes imposed on future buyers finance the public facilities and services for development. The law requires sellers to provide a notice of special tax to the buyer to disclose the Mello Roos tax (Civil Code Section [1102.6](#)).

8. **This bill requires the BOE to adopt regulations.** The bill should allow the BOE should to prescribe the format for auditor data reporting rather than require the BOE to into the formal rule making process to prescribe the data format. If the need arises to implement a regulation, the process will take a minimum of six months to a year to implement the regulation.
9. **“Tax type” needs clarifying.** The phrase tax type could be interpreted to mean the purpose of the special tax, such as for schools, police, hospitals etc. CalTax’s policy brief reveals that the term “type” intends to refer to how the tax is calculated. Examples provided include: flat rate, structure’s age, street frontage, parcel use, room count, and square footage. The enacting tax ordinance or resolution contains details on how to calculate the tax. As previously noted, an additional tax based on property value (ad valorem) violates Article XIII A. It may be beneficial to collect other basic data such as the name and contact information for each levying local agency, a description of the parcel tax, the reasons for parcel tax exemption and the statutory authority for the parcel tax.
10. **Local agencies use the annual property tax bill as a cost effective mechanism to collect monies.** Many counties require a local agency to enter into a written agreement to collect the agency’s special tax, special assessment, and/or property-related fee on the property tax bill. The agreement often requires the local agency to timely respond to taxpayer inquiries and provides a phone number for taxpayers’ questions. In some counties, the tax bill lists the phone number next to the charge. Other counties provide an informational insert with the tax bill or reference the county’s website contact information. GC Section [50077](#), among others,<sup>10</sup> allows the county to charge local agencies for applying special taxes and special assessments to the tax roll for collection with the property tax bill.
11. **The public has other information sources regarding parcel taxes specific to their property.** The sponsor states that property tax bills do not uniformly identify a “parcel tax” as such, and that property owners do not understand the purpose and use of parcel tax funds. We note that voters must approve the tax based on the information contained in the ordinance or resolution presented to them. Additionally, as noted previously, the county publicizes contact information for each charge listed, often on the tax bill, so that owners can contact the levying local agency directly with any questions. Counties provide this information to minimize the workload impact and resultant costs that they would otherwise incur to redirect inquiring property owners.
12. **The report should be added to the existing Act and posted online.** These transparency provisions may be better placed within the structure of the existing Accountability Act. Given the anticipated data quantity, posting the report on the

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<sup>10</sup> GC Sections 29142, 27013, and 29304

BOE’s website, rather than giving the Governor a written report, reduces agency costs and provides the public with instant access at no charge. With the exception of reports for the Governor, BOE now publishes its annual report tables electronically on its website rather than in written form.

**13. This bill requires the BOE to undertake these tasks using existing funds or resources.** However, the workload this bill imposes is not absorbable using existing resources.

**COST ESTIMATE**

This bill currently specifies that the BOE must collect, analyze, and publish this data with existing funds or resources, but the workload will not be absorbable. We anticipate moderately substantial costs of between \$200,000 and \$400,000. A detailed cost estimate is pending.

**REVENUE ESTIMATE**

This measure does not impact state or local revenues.

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