



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

DRAFT

Date Amended:	04/27/09	Bill No:	<u>ACA 9</u>
Tax:	Local taxes	Author:	Huffman
Related Bills:	SCA 12 (Kehoe)		

This analysis will not address the local bond indebtedness provision as it does not impact the State Board of Equalization (Board).

BILL SUMMARY

This constitutional amendment, which 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 special tax, which would include a transactions (sales) and use tax.

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 **Article XIII C, Section 2, of the California Constitution**, 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. In addition, it provides that special purpose districts or agencies, including school districts, have no power to levy general taxes.

The Board administers local 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 divisions of the Revenue and Taxation Code.

The **Bradley-Burns Uniform Local Sales and Use Tax Law** (commencing with Revenue and Taxation Code Section 7200), authorizes cities and counties to impose a local sales and use tax. The rate of tax is fixed at 1.25 percent 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. However, beginning July 1, 2004, and continuing through the “revenue exchange period” (**also known as the “Triple Flip”**), Section 7203.1 temporarily suspends the authority of a county or a city to impose a tax under Sections 7202 and 7203, and instead provides that the applicable rate is, in the case of a county, 1 percent; or in the case of a city, 0.75 percent or less. “Revenue exchange period” means the period on or after July 1, 2004, and continuing until the Department of Finance notifies the Board, pursuant to Government Code Section 99006, that the \$15 billion Economic Recovery Bonds have been repaid or that there is sufficient revenue to satisfy the state’s bond obligations.

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Of the 1 percent, cities and counties use the 0.75 percent to support general operations. The remaining 0.25 percent is designated by statute for county transportation purposes and may be used only for road maintenance or the operation of transit systems. The counties receive the 0.25 percent tax for transportation purposes regardless of whether the sale occurs in a city or in the unincorporated area of a county.

The **Transactions and Use Tax Law** (commencing with Revenue and Taxation Code Section 7251) authorizes cities and counties to impose transactions and use taxes (hereinafter referred to as district taxes) under specified conditions. Counties are authorized to impose a district tax for general purposes and special purposes at a rate of 0.25 percent, or multiples of 0.25 percent, if the ordinance imposing the tax is approved by the voters in the county. Cities also are authorized to impose a district tax for general purposes and special purposes at a rate of 0.25 percent, or multiples of 0.25 percent, if the ordinance imposing the tax is approved by the voters in the city.

The combined rate of all district taxes imposed in any county cannot exceed 2 percent.

The following table provides the section of the law authorizing for 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	7285
County	Specific Purpose tax (expenditure plan required)	2/3 vote of Board of Supervisors and 2/3 vote of county voters	7285.5
City	General Purpose tax	2/3 vote of City Council and majority of city voters	7285.9
City	Specific Purpose tax (expenditure plan required)	2/3 vote of City Council and 2/3 vote of city voters	7285.91
County Authority	Transportation Authority	2/3 vote of Board of Supervisors and 2/3 vote of county voters	Public Utilities Code Divisions 10-25

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 special tax.

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

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.

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.

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Session	Bill	Summary
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 percent 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.
2005-06	ACA 7 Nation	Would have constitutionally authorized a city, county, or special district, subject to 55 percent 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 percent voter approval, to impose a special tax for funding sheriff, police, or fire protection services. Died on the Assembly inactive file.
2003-04	ACA 7 Dutra	Would have constitutionally authorized a local transportation agency and a regional transportation agency, subject to 55 percent voter approval, to impose a transactions and use tax at a rate of 0.50 percent to fund transportation projects. Died on the Assembly inactive file.
2003-04	ACA 9 Levine	Would have constitutionally authorized 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. Died on the Assembly inactive file.
2003-04	ACA 14 Steinberg	Would have constitutionally authorized local governments, with the approval of 55 percent of the voters, to impose a transactions 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. Died on the Assembly inactive file.
2003-04	ACA 15 Wiggins	Would have authorized local governments, with the approval of a majority of the voters, to impose a special tax to fund local public safety departments, as defined. Died on the Assembly inactive file.
2003-04	SCA 2 Torlakson	Would have constitutionally authorized 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. Died in Senate Committee on Constitutional Amendments.
2003-04	SCA 11 Alarcon	Would have constitutionally authorized local governments, with the approval of 55 percent of the voters, to impose, extend, or increase 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. Died on the Senate inactive file.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author to provide local governments the option to use bonded or special tax funding for critical programs and services. According to the author, “For many communities around the state, the quality, and indeed the viability of critical services like police and fire protection, schools, libraries, parks, road maintenance, and flood control will be in jeopardy without additional revenues. Yet, to secure essential funding for these services, local governments face the daunting prospect of bringing a special tax measure to the voters and winning two-thirds approval. Such measures often fail despite being supported by a strong majority of the community.”
2. **District taxes currently administered by the Board.** As of April 1, 2009, there are 112 local jurisdictions (city, county, and special purpose entity) imposing a district tax for general or specific purposes. Of the 112 jurisdictions, 38 are county-imposed taxes and 74 are city-imposed taxes. Of the 38 county-imposed taxes, 1 is a general purpose tax and 37 are special purpose taxes. Of the 74 city-imposed taxes, 51 are general purpose taxes and 23 are special purpose taxes. Currently, the district tax rates vary from 0.1% to 1.0%

A listing of the district taxes, rates, and effective dates is available on the Board's website: www.boe.ca.gov/sutax/pdf/districtatelist.pdf. Because the combined rate of all district taxes imposed within a county cannot exceed 2 percent, the current maximum combined state, local, and district tax rate is 10.25 percent¹.

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

By lowering the vote threshold for local special taxes, many cities and counties will succeed when bringing a special tax measure to the voters. As a result, more cities and counties will be competing for a portion of the 2 percent cap. With cities and counties pushing for a portion of the 2 percent rate, it is likely that legislation will be introduced to increase the 2 percent limitation.

4. **Related Legislation.** SCA 12 (Kehoe) would similarly authorize local governments, with the approval of 55 percent of the voters, to impose, extend, or increase a special tax, which would include a district tax, but to fund fire protection services and certain sheriff and police equipment and services.

COST ESTIMATE

This bill by itself would not result in additional costs to the Board. However, under the Transactions and Use Tax Law, cities and counties are required to contract with 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.

¹In 2003, SB 314 (Chapter 785, Murray) authorized the Los Angeles Metropolitan Transportation Authority to impose a 0.50 percent district tax for specific transportation projects, and excluded that 0.50 percent tax from the 2 percent limitation. In the November 2008 election, voters in Los Angeles County approved this 0.50 tax, which will be operative on July 1, 2009. Due to currently existing district taxes, the cities of Pico Rivera and South Gate's tax rate will increase to 10.75 percent.

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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