



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	12/06/04	Bill No:	ACA 7
Tax:	Local taxes	Author:	Nation
Related Bills:			

This analysis will only address the bill's provisions that impact the Board.

BILL SUMMARY

This bill, a constitutional amendment that would require statewide majority voter approval before taking effect, would authorize a city, county, or special district, subject to 55 percent voter approval, to impose a special 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 2, of the California Constitution**, a local government may not impose, extend, or increase any special tax unless that tax is approved by two-thirds vote of the electorate.

The **Sales and Use Tax Law** (Part 1, Division 2, Revenue and Taxation Code), provides that a sales tax is imposed on retailers for the privilege of selling tangible personal property at retail in this state. The use tax is imposed upon the storage, use, or other consumption of tangible personal property purchased in this state. Either the sales tax or the use tax applies with respect to all sales or purchases of tangible personal property, unless specifically exempted.

Currently, the state portion of the sales and use tax rate is 6.25 percent. The components of the state sales and use tax rate are as follows:

- 5 percent state tax is allocated to the state's General Fund which is dedicated for state general purposes (Sections 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 governments to fund health and welfare programs (Sections 6051.2 and 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);
- 0.25 percent state tax is allocated to the Fiscal Recovery Fund which is dedicated to

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the repayment of the \$15 billion Economic Recovery bonds.

The **Bradley-Burns Uniform Local Sales and Use Tax Law** (Part 1.5, Division 2, Revenue and Taxation Code) authorizes a county that adopts a specified ordinance to impose a local sales and use tax at a rate of 1.25 percent, and similarly authorizes a city, located within a county, to impose a local sales and use tax rate of up to 1 percent that is credited against the county rate. Beginning on July 1, 2004, and continuing through the revenue exchange period (also known as the “Triple Flip” period), existing law temporarily suspends the authority of a county or a city to impose a tax under the Bradley-Burns Law, and instead provides that the applicable rate to be imposed by a county is 1 percent and by a city, 0.75 percent or less.

The **Transactions and Use Tax Law** (Parts 1.6 and 1.7, Division 2, Revenue and Taxation Code) authorizes a county or a city to levy, increase, or extend a transactions and use tax for general purposes at a rate of 0.25 percent, or multiple thereof, if the ordinance imposing the tax is approved by a majority vote of the voters. Regarding special taxes, a county or a city is authorized to levy, increase, or extend a transactions and use tax for special purposes at a rate of 0.25 percent, or multiple thereof, if the ordinance imposing the tax is approved by two-thirds vote of 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 2 percent. City imposed transactions and use taxes count against the 2 percent cap so that the combined rate of transactions and use taxes imposed countywide may not exceed 2 percent.

Proposed Law

This bill would amend Section 4 of Article XIII A of the California Constitution to authorize a city, county, or special district to impose a special tax with the approval of 55 percent of the voters voting on the proposition.

This bill would amend Section 2 of Article XIII C of the California Constitution to provide that a local government shall not impose, extend, or increase any special tax unless that tax is approved by 55 percent of the voters voting on the proposition.

This bill would also amend Section 3 of Article XIII D of the California Constitution to conform to the provision that amends subdivision (d) of Section 2 of Article XIII C.

As a constitutional amendment, this bill would require approval of a majority of the voters to take effect. If approved by the Legislature, 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.

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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. 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 subsequently 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 XIII C and XIII D 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.

Prior Legislation

Several bills were introduced during the 2003-04 Legislative Session that would have, upon approval of the state's voters, lowered the vote requirement for a local entity to impose a special tax:

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. This bill died on the Assembly inactive file.

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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. This bill died on the Assembly inactive file.

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. This bill was placed on the inactive file by motion of Assemblymember Steinberg. This bill died on the Assembly inactive file.

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. This bill died on the Assembly inactive file.

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. This bill was re-referred to Senate Committee on Constitutional Amendments. No further action was taken by the Committee.

SCA 11 (Alarcon) would have constitutionally authorized local governments, with the approval of a majority 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. This bill died on the Senate inactive file.

COMMENTS

- 1. Sponsor and purpose.** This bill is sponsored by the author to allow cities, counties, and special districts to pass, extend, or increase a special tax, with a 55 percent, rather than two-thirds voter approval.
- 2. November 2004 General Election Results.** In an effort to increase revenue to fund general government and special projects, cities and counties placed a total of 53 local sales and use tax measures on the November General Election ballot. Of the 53 measures, 28 were general taxes and 25 were special taxes. General purpose taxes require a majority vote of the people and are used to pay for many local government programs, rather than used for specific programs. Special purpose taxes require a two-thirds vote of the people and are used for special purposes such as transportation projects and police and fire services. The 25 special tax measures consisted of 10 for transportation (5 of which were continuations of an existing tax), 7 for public safety, 3 for library services, and the remaining for other various purposes.

Of the 53 measures, 24 were county measures and 29 were city measures. Of the county measures, 6 were general purpose and 18 were special purpose.

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- All 6 of the general purpose taxes failed;
- Of the county special purpose taxes: 10 passed and 8 failed;
- Six of the special purpose taxes that passed were a continuation of an existing tax: 5 were for transportation purposes and 1 for library services.

Of the city measures, 22 were general purpose and 7 were special purpose.

- Of the city general purpose taxes: 9 passed and 13 failed;
- Of the city special purpose taxes: 4 passed and 3 failed;
- All 4 of the special purpose taxes that passed were for public safety.

The special tax measures that failed are as follows:

Jurisdiction	Purpose	Yes %	No %
<u>County</u>			
Del Norte	Library	66.00 %	34.00 %
Los Angeles	Public Safety	59.96 %	40.04%
Mariposa	School District	62.64%	37.36 %
San Luis Obispo	Library	47.98%	52.02 %
Santa Cruz	Transportation	43.25 %	56.75 %
Solano	Transportation	63.88 %	36.12 %
Ventura	Open Space	48.73 %	51.27 %
Ventura	Transportation	41.72 %	58.28 %
<u>City</u>			
Merced	Public Safety	46.93 %	53.07 %
Susanville	Sports Complex	65.39 %	34.61 %
Ukiah	Public Safety	61.90 %	38.10 %

3. Currently, 17 counties are imposing transactions and use taxes for transportation purposes. Many of these counties' transactions and use tax measures were approved by a majority vote. Of the 17 counties, 13 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 in Riverside County approved (by a two-thirds vote) an extension of the existing Riverside County

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Transportation Commission transactions and use tax from June 30, 2009, to June 30, 2039.

At the November 2004 General Election, voters in the five counties of Contra Costa, Sacramento, San Bernardino, San Diego, and San Mateo voted to extend (by a two-thirds vote) a transactions and use tax for transportation purposes for periods ranging from 30 to 40 years. Voters in Marin and Sonoma counties, at the November General Election, approved (by two-thirds vote) the authorization of a local transportation authority to impose a transactions and use tax for transportation purposes for a period of 20 years, effective April 1, 2005.

- 4. The maximum combined transactions and use tax rate imposed throughout any county is 2 percent.** Existing Transactions and Use Tax Law provides a 2 percent rate limitation in any county. A transactions and use tax imposed by a city or special district counts against the county rate. For example, Los Angeles County imposes two transactions and use taxes each at a rate of 0.50 percent for a total countywide rate of 1 percent. The City of Avalon located within Los Angeles County imposes a transactions and use tax at a rate of 0.50 percent. Thus, the total combined transactions and use tax rate in Los Angeles County is 1.50 percent. If Los Angeles County wanted to impose an additional transactions and use tax, in order to stay within the 2 percent cap, the County would be limited to a rate of 0.50 percent.

COST ESTIMATE

This bill by itself would not result in additional costs to the Board. Local governments are required to contract with the Board to perform functions related to the transactions and use tax ordinance, 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 transactions and use taxes, this bill, if approved statewide, could increase local government revenues. The revenue impact would be specific to each local government that approved a tax.

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