Date of Hearing: April 25, 2018

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 2920 (Thurmond) – As Amended April 9, 2018

SUBJECT: Transactions and use taxes: City of Berkeley.

SUMMARY: Allows the City of Berkeley to adopt an ordinance proposing the imposition of a transactions and use tax that exceeds the 2% statutory limitation. Specifically, **this bill**:

1) Allows the City of Berkeley to impose a transactions and use tax for general or specific purposes to support countywide or citywide programs, as applicable, at a rate of no more than 0.5% that would, in combination with all other transactions and use taxes, exceed the 2% cap established by existing law, if all of the following conditions are met:

   a) The city adopts an ordinance proposing the transactions and use tax by any applicable voting requirements;

   b) The ordinance proposing the transactions and use tax is approved by the voters voting on the ordinance in accordance with California Constitution Article XIII C; and,

   c) The transactions and use tax conforms to the Transactions and Use Tax Law, as specified.

2) Finds and declares that a special law is necessary because of the unique circumstances the City of Berkeley faces in addressing homelessness within its borders.

EXISTING LAW:

1) Authorizes cities and counties to impose a local sales and use tax.

2) Authorizes cities and counties to impose transactions and use taxes.

3) Prohibits, in any county, the combined rate of all taxes imposed in accordance with Transactions and Use Tax Law from exceeding 2%.

FISCAL EFFECT: None

COMMENTS:

1) **Transactions and Use Taxes.** Existing law authorizes cities and counties to impose transactions and use taxes in 0.125% increments, in addition to the state's 7.5% sales tax, provided that the combined rate in the county does not exceed 2%. Transactions and use taxes are taxes imposed on the total retail price of any tangible personal property and the use or storage of such property when sales tax is not paid. These types of taxes may be levied as general taxes (majority vote required), which are unrestricted, or special taxes (two-thirds vote required), which are restricted for a specified use.

   Prior to 2003, cities lacked the ability to place transactions and use taxes before their voters without first obtaining approval by the Legislature to bring an ordinance before the city

council, and, if approved at the council level, to the voters. This was remedied by SB 566 (Scott), Chapter 709, Statutes of 2003. SB 566 also contained provisions to increase a county's transactions and use tax cap because of the possibility that certain counties were going to run out of room under their caps, if cities within those counties approved transactions and use taxes.

Because of the interaction between city-imposed and county-imposed transactions and use taxes, the concern that counties will run into the 2% cap still applies today. Currently, the Counties of Alameda, Contra Costa, Los Angeles, Santa Clara, and San Mateo have reached the 2% limit, and the Counties of Marin, Santa Cruz, and Sonoma are near the 2% limit. The Legislature has granted several exemptions to the 2% cap, including to several counties to allow an additional countywide transactions and use tax for transportation purposes.

According to the State Board of Equalization, as of April 1, 2017, 257 local agencies impose their own transactions and use taxes: six of 54 county-imposed taxes are general purpose taxes and 48 are special purpose taxes with 35 dedicated for transportation purposes. Of the 203 city-imposed taxes, 163 are general purpose and 40 are special purpose.

2) **Bill Summary.** This bill provides an exemption to the City of Berkeley from the 2% transactions and use tax combined rate cap that is currently in statute. This bill authorizes the City to adopt an ordinance to propose the imposition of a transactions and use tax for general or specific purposes at a rate of no more than 0.5%, and with the appropriate voter approval pursuant to the California Constitution, which requires a majority vote for transaction and use taxes for general purposes and a two-thirds vote for specific purposes. The City of Berkeley is the sponsor of this bill.

3) **Author's Statement.** According to the author, "The City of Berkeley faces challenges relating to homelessness that are unique to its borders. AB 2920 will give the voters of the city the ability to decide whether they want to increase taxes to fund city services."

4) **Exemptions to the 2% Cap.** The Legislature has previously granted exemptions to the 2% statutory cap in Alameda, Contra Costa, Los Angeles, Monterey, and San Mateo counties.

   a) **Alameda County.** In 2010, voters in Union City in Alameda County approved a transactions and use tax of 0.5%, which in addition to three other county 0.5% taxes, crowded out the county from imposing any additional taxes under the 2% combined rate. In 2011, the Legislature provided a one-time exemption for Alameda County from the 2% transactions and use tax combined rate cap [AB 1086 (Wieckowski), Chapter 327, Statutes of 2011]. However, while 66.53% of Alameda County voters approved the tax, it was not enacted as it fell short of the two-thirds vote required (Measure B1). The Legislature extended the authority for Alameda County to adopt an ordinance imposing a transactions and use tax from January 1, 2014, to December 31, 2020, and authorized Contra Costa County to adopt an ordinance imposing a transactions and use tax in the same manner as Alameda County [AB 210 (Wieckowski), Chapter 194, Statutes of 2013].

   In November of 2014, voters in Alameda County passed Measure BB, a transactions and use tax at 0.5% to fund transportation improvements for 30 years. AB 1665 (Bonilla),

Chapter 45, Statutes of 2016, removed the existing authority granted to Alameda County and Contra Costa County to impose an additional transactions and use tax, subject to voter approval, and instead, granted Contra Costa County's existing authority to the Contra Costa Transportation Authority. That tax also fell short, garnering 63.45% (Measure X). Most recently, AB 366 (Bonta), Chapter 502, Statutes of 2016, provided an exemption to the City of Alameda from the 2% combined rate cap, until January 1, 2025.

b) **Los Angeles County.** SB 314 (Murray), Chapter 785, Statutes of 2003, originally enacted provisions that authorized the Los Angeles County Metropolitan Transportation Authority (MTA) to impose a 0.5% transactions and use tax, not subject to the 2% cap for no more than six and one-half years, for specific transportation projects and programs. The authority to put a tax measure on the ballot was never used. AB 2321 (Feuer), Chapter 302, Statutes of 2008, modified those provisions to allow MTA to impose a transactions and use tax for 30 years. In November 2008, more than 67% of Los Angeles County voters approved this tax in a ballot measure known as Measure R.

AB 1446 (Feuer), Chapter 806, Statutes of 2012, authorized MTA, subject to voter approval, to extend the existing transactions and use tax (Measure R) for an unlimited amount of time, allowing MTA to determine a sunset date, if any. However, Measure J put before Los Angeles County voters in November 2012, narrowly failed to achieve the two-thirds threshold necessary for passage. SB 767 (De León), Chapter 580, Statutes of 2015, authorized MTA to impose an additional countywide 0.5% transactions and use tax. In November of 2016, Los Angeles County voters passed Measure M with 71.15% of the vote.

c) **Statewide.** AB 464 (Mullin) of 2015 would have increased the countywide transactions and use tax combined cap from 2% to 3%, but was vetoed by the Governor.

d) **Last year.** AB 703 (Skinner), Chapter 651, Statutes of 2017, allowed the Counties of Alameda and Santa Clara, as well as the City of Santa Fe Springs, to impose transactions and use taxes outside the current 2% countywide cap.

5) **Arguments in Support.** Supporters argue that with this increase in funding, the City seeks to direct these funds towards its Community Oriented Policing program, which includes the recruitment and retention of police officers, mental health outreach services, and its mental health transport program. AB 2920 will generate much needed funding that will improve community policing, help retain police officers, provide relief to its residents suffering from mental illness, help address its homeless encampments, and ensure residents get safe access to medical services.

6) **Arguments in Opposition.** Opponents argue that while this measure appears to abide by all local voting requirements, it sets a dangerous precedent to allow local agencies to increase taxes beyond existing law. Local agencies need to learn to balance their budgets and control pension excesses. The existing 2% Bradley-Burns threshold for local sales tax has been in place for decades with good reason. It promotes uniformity and keeps taxes reasonable.

7) **Double-Referral.** This bill is double-referred to the Revenue and Taxation Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

City of Berkeley [SPONSOR]

Opposition

Howard Jarvis Taxpayers Association

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