

Date of Hearing: August 30, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

AB 3259 (Wilson) – As Amended August 22, 2024

SUBJECT: Transactions and use taxes: City of Campbell: City of Pinole: County of Solano.

SUMMARY: Authorizes the cities of Campbell and Pinole, Solano County, and any city in Solano County, to impose a transaction and use tax (TUT) for general or specific purposes that exceeds the 2% cap. Specifically, **this bill:**

- 1) Allows Solano County, the City of Campbell, the City of Pinole, and any city within Solano County, by ordinance or by citizens' initiative, to impose a TUT for general or specific purposes at a rate of no more than .5% that would, in combination with all TUTs imposed, exceed the 2% cap established by law if all of the following requirements are met:
 - a) The respective city council or board of supervisors adopts an ordinance proposing the TUT by the applicable voting approval requirement. This requirement shall not apply to a tax imposed by citizens' initiative.
 - b) The ordinance proposing the TUT is submitted to the electorate and is approved by the voters voting on the ordinance by the applicable voting requirement in accordance with the California Constitution.
 - c) The TUT conforms to the TUT Law.
- 2) Provides that a TUT imposed pursuant to 1) above, shall not be considered for purposes of the combined rate limitation established by law.
- 3) Provide that if, as of January 1, 2029, an ordinance or citizens' initiative proposing a TUT has not been approved by Solano County or any of the individual cities, the authority in this bill that applies to the county and to each city, respectively, shall be repealed as of that same date.
- 4) Finds and declares that a special statute is necessary and that a general statute cannot be made applicable because of the unique fiscal pressures relating to transactions and use taxes imposed within the City of Campbell, the City of Pinole, and the County of Solano.
- 5) Contains an urgency clause.

FISCAL EFFECT: None.

COMMENTS:

- 1) **Sales and Use Taxes.** State law imposes the sales tax on every retailer “engaged in business in this state” that sells tangible personal property, and requires them to register with the California Department of Tax and Fee Administration (CDFTA), as well as collect the appropriate tax at purchase and remit the amount to CDFTA. Sales tax applies whenever a retail sale occurs, which is generally any sale other than one for resale in the regular course of business. The current rate is 7.25% as shown in the table below.

Rate	Jurisdiction	Purpose/Authority
3.9375%	State (General Fund)	State general purposes
1.0625%	Local Revenue Fund (2011 Realignment)	Local governments to fund local public safety services
0.50%	State (1991 Realignment)	Local governments to fund health and welfare programs
0.50%	State (Proposition 172 - 1993)	Local governments to fund public safety services
1.25%	Local (City/County) 1.00% City and County 0.25% County	City and county general operations Dedicated to county transportation purposes
7.25%	Total Statewide Rate	

Unless the purchaser pays the sales tax to the retailer, he or she is liable for the use tax, which the law imposes on any person consuming tangible personal property in the state. The use tax is the same rate as the sales tax, and also like the sales tax, must be remitted on or before the last day of the month following the quarterly period in which the person made the purchase.

- 2) **Transactions and Use Taxes.** The California Constitution states that taxes levied by local governments are either general taxes, subject to majority approval of its voters, or special taxes, subject to 2/3 vote (Article XIII C). Proposition 13 (1978) required a 2/3 vote of each house of the Legislature for state tax increases, and 2/3 vote for local special taxes. Proposition 62 (1986) prohibited local agencies from imposing general taxes without majority approval of local voters, and a 2/3 vote for special taxes. Proposition 218 (1996) extended those vote thresholds to charter cities, and limited local agencies' powers to levy new assessments, fees, and taxes. Local agencies generally propose to increase taxes by adopting an ordinance or a resolution at a public hearing.

State law allows cities, counties, and specified special districts to increase the sales and use tax applicable in their jurisdiction, also known as district taxes or TUTs. Generally, the combined TUT tax rate imposed within a local jurisdiction cannot exceed 2%. To determine whether a county has reached this rate limitation, all countywide taxes and the highest combined rate imposed by a city within the county are counted towards the county's rate limit. For example, if a county imposes three 0.5% countywide taxes and two cities within the county each impose a 0.5% tax, the combined rate in those two cities would be 2%. In such a circumstance, the two cities could not impose another TUT, and the county could not impose another countywide TUT, absent special authority to exceed the rate limitation.

Prior to 2003, cities lacked the ability to place TUTs 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, which imposed the uniform 2% countywide cap.

AB 464 (Mullin) would have increased the maximum combined rate of all TUTs that may be levied by authorized entities within a county from 2% to 3%. This bill was vetoed by Governor Brown stating, “This bill would raise, on a blanket basis, the limit on local transactions and use tax for all counties and cities from two percent to three percent. Although I have approved raising the limit for individual counties, I am reluctant to approve this measure in view of all the taxes being discussed and proposed for the 2016 ballot.”

According to CDTFA data, As of April 1, 2024, local jurisdictions (city, county, and special purpose authorities) impose a combined 413 TUTs for general or special purposes. Generally, TUTs are levied throughout the entire area of a single county, the entire unincorporated area within a single county, or a single incorporated city, except for those imposed by the BART District (Alameda, Contra Costa, and San Francisco counties) and the Sonoma-Marín Rail Transit District (Sonoma and Marin counties). Of the 413 district taxes, 67 are imposed countywide, four are imposed in unincorporated county areas, and 342 are imposed citywide.

- 3) **Upland.** On August 28, 2017, the California Supreme Court entered a decision in *California Cannabis Coalition v. City of Upland*, 3 Cal. 5th 924, which held that the requirement in Article XIIC, Section Two, subdivision (b) of the California Constitution that general taxes be submitted to the electorate at a regularly scheduled general election where members of the local governing board are subject to election did not apply to taxes proposed by voter initiative. As discussed in a March 7, 2018, joint oversight hearing, “*Uproar over Upland? Assessing the California Supreme Court’s Decision*,” groups seeking to impose special taxes by majority vote by initiative argued if the Court held the general election requirement in subdivision (b) did not apply to initiatives, then neither did the 2/3 vote requirement for special taxes in subdivision (d). At least seven such taxes imposed by voters in various local agencies across the state have been approved, and no court thus far has invalidated them. AB 3259’s authority to exceed the 2% cap applies to both taxes imposed by ordinance or initiative, so if voters submitted an initiative, rather than the county or a city, the measure would have a majority vote requirement.
- 4) **Bill Summary and Author’s Statement.** This bill allows the cities of Campbell and Pinole, Solano County, and any city in Solano County to impose a TUT for general or specific purposes at a rate of no more than .5% that would, in combination with all taxes imposed, exceed the 2% cap established by law, if specified conditions are met. This bill provides that the TUT authorizations with respect to any of the local agencies must be repealed if an ordinance or citizens’ initiative proposing the authorized TUT is not approved by the respective local agency by January 1, 2029. This bill is sponsored by the author.

According to the author, “Assembly Bill 3259 is primarily a district bill that would provide temporary and limited flexibility to residents in Solano County, as well as the Cities of Pinole and Campbell, to vote on local revenue measures to protect essential services and improve critical transportation infrastructure. It would empower voters and provide temporary and limited flexibility to voters in the aforementioned jurisdictions to raise the local sales tax above the county sales tax cap, subject to voter approval. This bill does not in any way alter the existing requirement that any new or additional transactions and use tax be submitted to

the voters for approval. Moreover, this bill includes an urgency clause to provide legal clarity for voters in the City of Benicia regarding a proposed sales tax increase on the ballot in the general election this November – which was placed there by a citizens’ initiative – that would put the City above the county sales tax cap. If the initiative were adopted by voters in the City of Benicia before this bill takes effect, the tax would exceed the limit established in Section 7251.1, making the tax invalid and depriving the City of Benicia of necessary funding for road repairs, transportation infrastructure, and other essential public services. This narrowly-tailored local control measure lends residents more authority over how local governments facing large structural deficits are able to continue to provide essential services that residents rely on, subject to the approval of those very same residents in an election.”

- 5) **Solano County TUTs.** Solano County has eight TUTs levied within its borders: one countywide tax (for public library purpose) and seven city-wide taxes. Currently, the countywide TUT of .125% is subject to the 2.00% combined rate limitation. Thus, for purposes of the limitation, the total countywide tax rate for Solano County is 0.125%. Since the highest city tax in the county is 1.875% (Vallejo), Solano County has reached the 2.00% combined rate limitation. The City of Vallejo imposes two TUTs and is the only city in Solano County that has reached the 2.00% rate limitation. It also imposes the highest TUT rate in Solano County at 9.25%. Therefore, subject to voter approval, enactment of this bill could increase the total tax rate in the City of Vallejo from 9.25% up to 10.25%.

According to the City of Benicia, voters have submitted a measure for the November 2024 ballot to increase the city’s existing 1.875% tax rate by another 0.5% to improve streets, roads, and sidewalks. If approved, Benicia would exceed the 2% cap by 0.375%.

- 6) **City of Campbell.** Campbell is a city of around 42,000 residents in the County of Santa Clara. There are six countywide TUTs in Santa Clara County that combined add a total of 2.125% to the statewide rate of 7.25%. The City of Campbell imposes one TUT of 0.25%. This means the tax rate in Campbell is 9.375%. The City of Campbell has placed a 0.5% measure on the November 2024 ballot. If approved, Campbell’s tax rate would increase to 9.875%, which would exceed the 2% cap by 0.625% (one countywide tax is already exempt from the 2% cap).
- 7) **City of Pinole.** Pinole is a city of around 19,000 residents in the County of Contra Costa. There are three countywide TUTs that combined add a total of 1.5% to the statewide rate of 7.25%. The City of Pinole imposes two TUTs that combine to add 1%. This means the tax rate in the City of Pinole is 9.75%. The City of Pinole has placed a 0.5% measure on the November 2024 ballot. If approved, Pinole’s tax rate would increase to 10.25%, which would exceed the 2% cap by 1% (one countywide tax is already exempt from the 2% cap).
- 8) **Policy Consideration.** California’s sales tax rate is currently at 7.25%, which is high compared to other states, especially when incorporating locally imposed TUTs. Some tax experts argue that sales and use taxes are regressive, meaning that the tax incidence falls more heavily on low-income individuals than high-income individuals because those of lesser means generally spend a greater percentage of their income on taxable sales, instead of intangible products or services which are not taxed. With this bill, the sales tax rate could grow as high as 10.25% in the City of Vallejo. For Campbell and Pinole, the maximum tax rate allowed under the bill would be 9.875% and 10.25% respectively. While local voters

must approve any tax, the Committee may wish to consider whether AB 3259 allows for rates that are too high.

- 9) **Related Legislation.** AB 2431 (Mathis) authorizes a city, county, or city and county to impose a TUT at an unspecified rate that exceeds the 2% statutory limitation if certain conditions are met. This bill was never heard in the Assembly Local Government Committee.

AB 2443 (J. Carrillo) Authorizes the cities of Lancaster, Palmdale, and Victorville to impose a TUT that exceeds the 2% statutory limitation. This bill is currently pending on the Governor's Desk.

- 10) **Previous Legislation.** AB 618 (Stone) of 2019 would have permitted the Cities of Emeryville (Alameda County) and Scotts Valley (Santa Cruz County) to impose a tax of up to 0.25% that exceeds the 2% cap. AB 618 was vetoed with a message that stated, "The Cities of Emeryville and Scotts Valley have not yet reached the statewide cap of 2 percent, making it unclear why additional tax authority is needed."

AB 723 (Quirk), Chapter 747, Statutes of 2019, provided that neither the tax imposed by BART nor the tax imposed by the Alameda County Transportation Commission counts against the 2% cap, and made a similar change in Santa Cruz County.

SB 1349 (Glazer), Chapter 369, Statutes of 2020, permitted Contra Costa County, and cities within Contra Costa County, additional legal flexibility to impose local TUTs.

AB 2453 (Bennett), Chapter 286, Statutes of 2022, authorized the Ventura County Transportation Commission to impose a TUT of no more than 0.5% that does not count against the cap in Ventura County.

AB 1256 (Wood), Chapter 572, Statutes of 2023, authorized Humboldt County to impose a TUT of up to 1% that exceeds the 2% statutory limitation.

AB 1385 (Garcia), Chapter 578, Statutes of 2023, raised the maximum TUT that RCTC may impose, from 1% to 1.5%.

AB 1679 (Santiago), Chapter 731, Statutes of 2023, authorizes Los Angeles County to impose a TUT of up to .5% that exceeds the 2% statutory limitation, as specified.

SB 335 (Cortese), Chapter 391, Statutes of 2023, allows the Santa Clara County Board of Supervisors to propose a TUT of up to .625% in Santa Clara County that exceeds the 2% cap and shifted the authority to impose a TUT for countywide transportation purposes in Ventura County that exceeds the 2% cap from the Ventura County Transportation Commission to the County.

SB 862 (Laird), Chapter 296, Statutes of 2023, authorized the board of directors of the Santa Cruz Metropolitan Transit District to impose a retail TUT of up to .5% after January 1, 2024, that is excluded from the 2% combined rate limit, if certain conditions are met.

- 11) **Arguments in Support.** According to the City of Benicia, "The City of Benicia is working diligently to address longstanding structural budget imbalance and confront aging infrastructure. In March of this year, Benicia residents overwhelmingly passed a ¾ cent

general purpose sales tax to support public safety and essential services. Additionally, Benicia voters increased our Transient Occupancy Tax from a rate of 9% to 13%. Both are designed to support Benicia's ability to provide programs and services to our community. But more work is needed to address our aging infrastructure.

"Benicia has 195 miles of roads to maintain. Unfortunately, the conditions of our roads are classified as fair to at risk with an average Pavement Condition Index Score (PCI) of 57, which is one of the lowest in the region. City engineers have estimated that we need over \$6 million each year to improve the condition of our roads. Regrettably, the funds received from State Gas Tax and other road related revenue is only about \$1.2 - \$1.5 million each year.

"To meet this challenge the residents of Benicia have come together to form a Save Our Streets coalition to draft a citizen initiative for the specific purpose tax to invest in our roads. Our citizens have successfully qualified this initiative for the November 2024 ballot. But our community needs the assistance of the State Legislature so we may enact this self-help measure. With the passage of our most recent sales tax, Benicia is at a 9.125% sales tax rate, nearly at the Solano County's cap of 9.25%. We seek the support of the State Legislature to support Assembly Bill 3259 that would increase Solano County's cap by .50%.

"It is important to note that action by the State Legislature will not automatically increase the tax burden of the residents of Solano County. Rather it allows each respective jurisdiction to empower their voters to decide for themselves to increase said tax to support local efforts. Over 2,700 Benicia residents signed a petition to give our community an opportunity to fix our roads, we most respectfully ask that you aid their effort for self-help. Please support Assembly Bill 3259."

- 12) **Arguments in Opposition.** According to the California Taxpayers Association and the Howard Jarvis Taxpayers Association, "California has the highest state-level sales and use tax rate in the country, and several cities in California, including Benicia, Fairfield, Vacaville, Vallejo, Dixon, Suisun City, and Rio Vista, have even higher rates. The sales and use tax is a regressive tax that has the greatest impact on low-income residents because it makes it more expensive for these taxpayers to purchase everyday necessities. Inflation has increased the cost of everyday goods, which in turn increases the sales tax that is imposed as a percentage of the retail price. Adding even more to the cost of living with a sales tax increase would harm Californians, and will disproportionately impact the state's most vulnerable residents.

"...Businesses engaged in manufacturing and research-and-development activities face a significant sales and use tax burden in California. Under existing law, when a business purchases manufacturing or R&D equipment, the purchase is subject to a one-time local sales tax of 1.25 percent plus any additional voter-approved transactions and use taxes. Taxing business inputs increases overall production costs for everyday goods produced in California. Authorizing Solano County, the City of Campbell, and the City of Pinole to exceed the 2 percent transactions and use tax cap would increase the cost of doing business for critical industries in the area.

"...Unlike the federal government, which receives an exemption for all state and local sales taxes, purchases made by municipal and state agencies are subject to state and local sales

taxes. Increasing the local sales tax would increase costs for purchases made by cities and counties, public school districts, and universities operating in the county.”

REGISTERED SUPPORT / OPPOSITION:

Support

City of Benicia
City of Campbell
City of Pinole
Solano County Board of Supervisors

Opposition

Alameda County Taxpayers' Association
California Taxpayers Association
Contra Costa Taxpayers Association
Howard Jarvis Taxpayers Association
Solano County Taxpayers Association
Sutter Yuba Taxpayers Association
Ventura County Taxpayers Association

Analysis Prepared by: Jimmy MacDonald / L. GOV. / (916) 319-3958