

Date of Hearing: August 20, 2018

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2920 (Thurmond) – As Amended June 13, 2018

**SUBJECT:** Transactions and use taxes: North Lake Tahoe Transportation Authority and City of Berkeley.

**SUMMARY:** Allows the City of Berkeley to impose a transactions and use tax (TUT) for general or special purposes at a rate of no more than 0.5%, outside the 2% cap; and, enacts several changes to the North Lake Tahoe Transportation Authority (Authority) Act.

**The Senate amendments:**

- 1) Enact the following changes to the Authority Act:
  - a) Replace its current five-member governing structure of elected board members with a seven-member appointed board with:
    - i) Two members appointed by the Placer County Board of Supervisors;
    - ii) One member of the governing body of the North Tahoe Public Utility District;
    - iii) One member of the governing body of the Squaw Valley Public Services District;
    - iv) One member of the governing body of the Tahoe City Public Utility District;
    - v) One member of the governing body of the Truckee Tahoe Airport District; and,
    - vi) One member of the governing body of the Northstar Community Services District.
  - b) Provide that if any of the districts specified in a), above, cease providing services within the boundaries of the Authority, the district loses its membership on the board, with the number of members adjusted accordingly;
  - c) Specify that the initial terms of office of each member of the board of directors shall be established by the appointing Authority of the member;
  - d) Extend the duration of the TUT the Authority can impose from 20 to 30 years;
  - e) Allow the tax rate to be imposed up to a 1% cap, instead of its current .5%; and,
  - f) Make other technical and clarifying amendments to the Authority Act.
- 2) Contain a legislative finding justifying the need for applying solely to the City of Berkeley and the Authority.

**EXISTING LAW:**

- 1) Authorizes cities and counties to impose local sales and use taxes.
- 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 TUT law from exceeding 2%.
- 4) Enacts the Authority Act, which authorizes the Placer County Board of Supervisors to create the Authority.
- 5) Uses surveying guidelines to specify the Authority's borders within a specified portion of Placer County that includes the North Lake Tahoe Basin and the surrounding resorts in the northern region of Lake Tahoe (Martis Valley, Squaw Valley and Alpine Meadows).
- 6) Provides that the Authority's governing board is composed of five members, elected to staggered four-year terms by voters within the district's boundaries.
- 7) Authorizes the Authority to impose a TUT within the Authority's borders in increments of .25% of up to .5%, for up to 20 years.

**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 TUT 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 TUT 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) **North Lake Tahoe Transportation Authority.** SB 1488 (Rainey), Chapter 1044, Statutes of 1998, enacted the Authority Act, which authorized the Placer County Board of Supervisors to create the Authority within a specified part of the county with the goal of paying for transportation improvement and transit programs within the North Lake Tahoe area. While counties can create transportation authorities, this act was distinctive because its jurisdiction only included a specific portion of eastern Placer County. Unique at the time, the Legislature authorized the Authority to impose a TUT within the Authority's borders of up to 0.5% for up to 20 years. However, the Authority was never formed after two local tax measures failed.

Public transit is currently provided in this area by the Truckee Tahoe Area Regional Transit, a service of Placer County. The county expects that service to continue even if the sales tax funding the Authority is approved. Two members of the Placer County Board of Supervisors are members of the Authority's seven-member governing board.

- 3) **Bill Summary.** This bill provides an exemption to the City of Berkeley from the 2% TUT combined rate cap that is currently in statute, and authorizes the City to adopt an ordinance to propose the imposition of a TUT 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.

Amendments taken in the Senate authorize the Authority to impose a voter approved TUT of up to 1%, instead of the current limit of .5%, within its boundaries, and change the board of directors of the Authority from an elected board to an appointed board. The City of Berkeley is the sponsor of this bill.

- 4) **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. In addition, this bill will grant voters in Placer County the opportunity to approve a tax increase to improve transportation services for residents and visitors to the area."
- 5) **Uneven Boundaries.** Currently, all 257 TUTs are applied within a whole county or city. In these cities and counties, retailers collect the applicable district tax rate for sales made at their business location. When administering a TUT, the California Department of Tax and Fee Administration (CDTFA) assigns a specific code to properly identify accounts within a district. As long as a tax is imposed within city or county boundaries, CDTFA can electronically identify accounts within these areas. However, when a tax applies on a subjurisdictional basis, CDTFA must instead manually identify accounts and addresses located in these areas, leading to higher costs and potential compliance issues for retailers. For example, retailers selling or delivering into these areas would need to determine whether or not the customer they're shipping to is located in the part of the County subject to the tax. Retailers usually use software or the CDTFA's website to determine the appropriate rate, but could end up overpaying the tax, resulting in potential refunds, or underpaying, which can lead to audits, penalties, and interest.

The Legislature authorized the Authority's subjurisdictional tax 20 years ago. Recently, the Legislature allowed the San Diego County Metropolitan Transit System and the North County Transit District to impose similar taxes [AB 805, (Gonzales Fletcher), Chapter 658, Statutes of 2017]. Additionally, the Legislature allowed counties to impose TUTs only in unincorporated areas [AB 2119, (Stone), Chapter 148, Statutes of 2014], but no county has yet imposed a tax using that authority.

With that said, CDTFA collects its costs from local agencies before remitting funds, so high administrative costs can significantly reduce local agency revenues from any tax. Placer County states that the Authority's statutory boundaries are well known, and currently uses these boundaries to differentiate transient occupancy taxes (TOTs or hotel taxes) applicable within these boundaries that do not apply in the rest of the county. The County adds that a tax election also has precedent, as residents of this area have previously voted to increase TOT taxes only applicable in this area.

- 6) **Arguments in Support.** The City of Berkeley argues that, "With this increase in funding, the City seeks to direct these funds towards our Community Oriented Policing program, which includes the recruitment and retention of police officers, mental health outreach services which will help people in crisis on our streets, and our mental health transport program. The City of Berkeley is the only district city that is an independent mental health jurisdiction with direct funding from the state of California for providing mental health services. This measure 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."

Additionally, the Placer County Board of Supervisors argues that, "The inclusion of updated and modernized language regarding the Authority will support local transportation agencies in the North Lake Tahoe region to better manage, fund, build and maintain multi-model transportation projects. The updated language will help implement regional and statewide plans including the regional transportation plans of the Tahoe Regional Planning Agency (TRPA), the Placer County Transportation Agency and the State Climate Action Plan. Furthermore, special districts and local businesses within the Authority support increased funding that is controlled locally for the development of transportation projects that protect the environment and improve the quality of life for individuals and businesses that choose to live, work, or play in the region."

- 7) **Arguments in Opposition.** According to the Howard Jarvis Taxpayers Association, "AB 2920 would allow the Legislature to authorize an additional half-cent sales tax for the City of Berkeley in excess of the 2% Bradley-Burns sales tax cap imposed on local municipalities. This would set Berkeley's overall sales tax rate at 9.75%. Only 24 other municipalities in California have a sales tax as high or higher. The bill also authorizes the North Lake Tahoe Transportation Authority to impose up to a one cent sales tax increase for 30 years. While the measure appears to abide by all local voting requirements, it sets a dangerous precedent to begin to allow counties to increase taxes beyond existing law. Counties need to learn to balance their budgets and control pension excesses. We simply cannot justify increased regressive taxation upon hard working families when California already has the highest state sales tax rate in the nation."

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

City of Berkeley [SPONSOR]  
California Tahoe Alliance  
North Lake Tahoe Chamber of Commerce  
North Lake Tahoe Resort Association  
North Tahoe Business Association  
Placer County Board of Supervisors  
Squaw Valley Public Service District  
Tahoe City Public Utility District  
Tahoe Transportation District

**Opposition**

California Taxpayers Association  
Howard Jarvis Taxpayers Association

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