

Date of Hearing: August 11, 2020

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

SB 1349 (Glazer) – As Amended April 8, 2020

SENATE VOTE: 27-11

SUBJECT: Transactions and use taxes: County of Contra Costa.

SUMMARY: Authorizes additional flexibility for Contra Costa County, and the cities within Contra Costa County, to impose local transactions and use taxes (TUTs). Specifically, **this bill:**

- 1) Provides that the existing TUT imposed in Contra Costa County by the Bay Area Rapid Transit District (BART) shall not be considered for purposes of the 2% cap.
- 2) Specifies that the current, and any potential future, Contra Costa County Transportation Tax shall not be considered for purposes of the 2% cap.
- 3) Clarifies that an additional authority previously granted to the Contra Costa Transportation Authority to impose a TUT at a rate of no more than 0.5% shall not be considered for the purposes of the 2% cap.
- 4) Authorizes Contra Costa County to impose a TUT for general or specific purposes to support countywide programs at a rate of no more than 0.5% that would, in combination with all of the taxes imposed, exceed the 2% cap, if all of the following requirements are met:
 - a) The County adopts an ordinance proposing the TUT by any applicable voting requirement;
 - b) The ordinance proposing the TUT is submitted to the electorate and is approved by the voters voting on the ordinance in accordance with Article XIII C of the California Constitution; and,
 - c) The TUT conforms with TUT law.
- 5) Clarifies that a TUT imposed pursuant to 4), above, shall not be considered for the purposes of the 2% cap.
- 6) Finds and declares that a special statute is necessary and that a general statute cannot be made because of the unique pressures being experienced in Contra Costa County.

FISCAL EFFECT: None

COMMENTS:

- 1) **Bill Summary.** This bill provides that the current 0.5% TUT imposed by BART, the current 0.5% Contra Costa County Transportation Tax, and a potential future 0.5% Contra Costa County Transportation Tax, does not count against the 2% cap. The bill clarifies that a previous specific authority for the Contra Costa County Transportation Authority does not count against the cap either. The measure also authorizes Contra Costa County to impose a

new countywide TUT of up to 0.5% that is also exempt from the cap, so long as the county board of supervisors enacts an ordinance, voters approve the tax by the applicable Constitutional voter threshold, and the tax otherwise complies with state law. This bill is sponsored by the author.

- 2) **Author's Statement.** According to the author, "SB 1349 would allow the County of Contra Costa, or a city within the county, to increase sales and use taxes to support programs and services with voter approval. Cities and counties across the state are responsible with providing their constituents with a number of supportive services to address local needs. This includes police and fire services, homeless services and public health services. The County of Contra Costa County has been heavily impacted by the recent COVID-19 pandemic. The County estimates losses of nearly \$100 million in revenue, while cities estimate losses of up to \$8 million. This bill will provide Contra Costa County with the tools it needs to generate funding to mitigate the negative impact COVID-19 will undoubtedly have on critical services. The state Legislature has recently approved several similar bills, and this bill is consistent with the provisions of previous legislation. The need for public services is likely to increase in the aftermath of this pandemic. This bill is a reasonable effort to address ongoing funding needs."
- 3) **Transactions and Use Taxes.** Existing law authorizes cities and counties to impose TUTs in 0.125% increments, in addition to the state's 7.25% sales tax, provided that the combined rate in the county does not exceed 2%. TUTs 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 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. 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 TUTs.

State law allows cities, counties, and specified special districts to increase the sales and use tax applicable in their jurisdiction, also known as district or TUTs. As of April 1, 2020, 325 local agencies impose their own TUTs: 62 are imposed countywide, 261 citywide, two solely in unincorporated areas, and two across multiple counties. State law caps the total rate for any county at 2%, with exceptions for a number of cities and other local agencies.

- 4) **Contra Costa County.** Contra Costa County has two countywide taxes: a 0.5% rate applicable to all counties within the BART, as well as a 0.5% rate imposed by the Contra Costa County Transportation Authority, for a countywide rate of 8.25%. The Legislature has additionally authorized the Contra Costa County Transportation Authority to impose a district tax of up to 0.5% for transportation purposes outside the 2% cap [AB 210 (Wieckowski), Chapter 210, Statutes of 2013, and AB 1665 (Bonilla), Chapter 45, Statutes of 2016]; however, the County has not imposed a tax using this authority.

The City of El Cerrito imposes a 1.5% rate within its boundaries, 0.5% of which is exempt from the cap [AB 1324 (Skinner), Chapter 795, Statutes of 2014], for a total rate of 9.75%. 16 other cities in the county also impose taxes at lower rates. As a result, Contra Costa County cannot impose an additional tax because the 2% cap applies countywide, unless it is imposed only in the unincorporated area, which the Legislature authorized by AB 2119 (Stone), Chapter 148, Statutes of 2014.

5) **Policy Considerations.** The Committee may wish to consider the following:

- a) **New Standard?** The Legislature has often authorized individual local agencies to increase their TUT above the 2% cap on a case-by-case basis that gives the Legislature oversight. One of the most recent attempts, AB 618 (Stone) from last year, would have allowed the cities of Scotts Valley and Emeryville to adopt an ordinance proposing the imposition of a TUT that exceeds the 2% statutory limitation. While consistent with past measures that were routinely signed into law, AB 618 was vetoed by the Governor.

Last year, by exempting certain existing TUTs imposed by BART, Santa Cruz County Metropolitan Transit District, and specific TUTs in Alameda County from the 2% cap, AB 723 (Quirk), Chapter 747, Statutes of 2019, presented an alternate approach that allows any local agency that has the ability to levy or increase a TUT to do so until the 2% cap is once again reached in affected counties. This bill continues this approach, and future jurisdictions will likely seek the same treatment for their county's transportation taxes. The Committee may wish to consider whether the unintended consequences of such a policy might create competition among local agencies in tax measures absent the Legislature's oversight.

- b) **No Guarantees.** By exempting specific existing countywide TUTs from the 2% cap, room under the cap will be increased. However, this bill does not designate specific local agencies that can increase a TUT, essentially creating a renewed free-for-all, race to the ballot to fill that newly created space. This means that each city within a county, or the county itself, can place TUT measures on the ballot until the 2% countywide cap is reached. One benefit of identifying specific local agencies is assurance that a local agency will have a decent opportunity to submit a tax increase to the voters and for the voters to approve it. For example, if the City of Antioch submits a TUT increase to its voters and the measure fails, SB 1349 does not preclude a competing countywide tax measure in Contra Costa County from being passed, potentially preventing Antioch or other cities within Contra Costa County from any future TUT increases. The Committee may wish to consider how the approach in this bill will dictate winners and losers as local agencies compete to raise local revenue.
- 6) **Arguments in Support.** The California Professional Firefighters argues that, "Transaction and use taxes, as currently defined, are important funding sources for counties for a variety of purposes, including but not limited to infrastructure maintenance for roads, public transit, and other transit items. These taxes are limited so that the combined total of all transaction and use taxes in a single county may not exceed 2%, with stricter limitations placed on specific taxes within the county. However, for some counties with complex transit systems and needs for not only the county residents but those that commute into or through, overlapping tax measures to pay for those systems can limit the ability of the county to fund their own infrastructure needs.

“SB 1349 permits Contra Costa County, and cities within Contra Costa County, additional flexibility to impose local transactions and use taxes. This flexibility is achieved for Contra Costa County by removing the currently imposed BART tax and other county transportation taxes from the 2% countywide cap, similar to what was previously done for Alameda and Santa Cruz Counties. The bill also provides Contra Costa County explicit authority to impose a new 0.5% tax that would not count towards the 2% cap so long as the county board of supervisors enacts an ordinance, voters approve the tax by the applicable Constitutional voter threshold, and the tax otherwise complies with state law.

“Our local affiliates depend upon local governments to invest in their communities. While maintenance of county streets, highways, and public transportation is critical for public safety, the County must have the flexibility to exercise its taxing authority in order to adequately fund its fire department. Firefighters dedicate their lives to serving the public and the resulting revenues, should the additional half cent tax be imposed, will provide critical support for fire and EMS services.”

- 7) **Arguments in Opposition.** The Howard Jarvis Taxpayers Association (HJTA) argues, “The Bradley Burns Sales and Use Tax Act, established in 1956, set a uniform sales tax rate for local governments of no more than two percent. In the years following, a number of municipalities have sought legislative authorization to increase their sales tax rates above this common-sense threshold. SB 1349 would allow Contra Costa County to authorize a maximum sales tax of up to 0.5 percent, thus exceeding the two percent threshold. Because the bill solely addresses transportation projects, the sales tax increase would require a two-thirds local vote of county residents to be approved.

“Despite the fact that SB 1349 abides by existing voter approval requirements set forth in the California Constitution, HJTA must oppose this bill as we have opposed other similar tax authorization bills over the last decade. Sales taxes are especially regressive and tend to disproportionately increase expenses for low income residents. Also, California has the highest sales tax in the nation. Considering that 70 percent of the nation’s economic output hinges on the buying and selling of consumer goods, communities should be mindful of the economic impact of asking the Legislature to approve even more taxes. This is especially true in the midst of the COVID-19 pandemic where both state and local governments have experienced drastic declines in sales tax revenue.

“Finally, increasing taxes across multiple jurisdictions makes tax compliance more difficult for retailers and increases the likelihood of picking winners and losers in the private sector economy. The Bradley Burns two percent sales tax rate has remained unchanged since 1955 because it provides important economic consistency. There is no reason for the Legislature to continue to exempt municipalities from it.”

REGISTERED SUPPORT / OPPOSITION:

Support

California Labor Federation, AFL-CIO
California Professional Firefighters
California Teamsters Public Affairs Council
Cities of Concord, Lafayette, Orinda, and Pittsburg
Contra Costa County
Contra Costa Transportation Authority
International Federation of Professional and Technical Employees, Local 21
Office & Professional Employees International Union, Local 29, AFL-CIO
Professional and Technical Engineers, IFPTE Local 21, AFL-CIO
Service Employees International Union (SEIU), California
Town of Danville

Opposition

Alameda County Taxpayers Association
California Taxpayers Association
Contra Costa Taxpayers Association
Howard Jarvis Taxpayers Association
Transportation Solutions Defense and Education Fund

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