

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT



STAFF REPORT

MEETING DATE: 12/8/2021

Staff Report No. 21-472

TO: AC Transit Board of Directors
FROM: Jill A. Sprague, General Counsel
SUBJECT: Taxing Authority

BRIEFING ITEM

RECOMMENDED ACTION(S):

Consider receiving report regarding the District's authority to levy taxes and options for revenue generating ballot measures. [Requested by Director Peeples - 12/9/20]

STRATEGIC IMPORTANCE:

Goal - Financial Stability and Resiliency

The District relies on multiple revenue sources to fund operations and capital improvements. Given the impact of the pandemic on fare box revenue, the District may need to become even more reliant on tax revenue. Understanding what taxing authority is available to the District will help focus public opinion polling to determine what revenue ballot measures might be successful.

BUDGETARY/FISCAL IMPACT:

There is no budgetary or fiscal impact associated with this report. Pursuing ballot measures to increase tax revenue to the District could contribute to greater financial stability.

BACKGROUND/RATIONALE:

I. Current Locally Enacted Funding Sources

The District currently receives tax funding from multiple local sources, including:

- Local property taxes in Alameda and Contra Costa Counties.
- The District's parcel tax in Special Transit Service District 1 (Measure VV/C1, expires in 2039).
- AB 1107 imposed a 0.5% retail transaction and use tax in Alameda and Contra Costa counties and the City and County of San Francisco (75% is allocated to BART and 25% is allocated between AC Transit and SFMTA).
- Alameda County Measure BB renewed and increased a preexisting 0.5% retail transaction and use tax known as Measure B, resulting in a 1% sales tax throughout Alameda County through March 2045. The District is authorized to receive 23.3% of these taxes on the condition that the money be used for service exclusively in Alameda County.
- Contra Costa County has a similar transportation retail transaction and use tax, known as Measure J,

that is 0.5%, which continues until 2034. The District is authorized to receive a percentage of the proceeds of the tax on the condition that the money be used for service exclusively in Contra Costa County.

II. Potential sources of additional funding

Public Utilities Code section 25891 et seq. gives the District general taxing authority. However, these provisions predate Proposition 13 (Cal. Const. art. XIII A) and Proposition 218 (Cal. Const. art. XIII C), which impose voter approval requirements for any new or increased taxes. The California Supreme Court has held that transportation districts, like other special districts, are limited to passing special taxes, which require a two-thirds majority in order to pass. See *Santa Clara County Local Transportation Authority v. Guardino*, 11 Cal. 4th 220 (1995).

Public Utilities Code section 25892.1, which was last amended after passage of Propositions 13 and 218, addresses the District's authority to pass special taxes. Section 25891.1 states that these taxes "shall be applied uniformly to all taxpayers or all real property within the district, or any portion of the district that is coterminous with the boundaries of a city or the boundaries of contiguous cities, including any properties added to the district, except that unimproved property may be taxed at a lower rate than improved property." Section 25892.1 also requires that the "proceeds of the special taxes shall be used to provide, within the area taxed, for the operation, maintenance, or acquisition of any public improvement or utility for transportation purposes." (Emphasis added.)

A. Bonds

The District can also issue general obligation bonds with voter approval. Cal. Pub. Util. Code § 26201 et seq. The board may put the issue on the ballot by a two-thirds vote or voters may do so by petition. *Id.* §§ 26202, 26204. The voters must approve the bonds by two-thirds vote. *Id.* § 26211. Section 26263 provides that "[i]n lieu of the immediate levy of a tax to pay the interest or any part thereof on any bonded indebtedness," the board may include in the estimate of the amount that is needed for the bonds to raise "a sum sufficient to pay interest on all of the bonds or part thereof during the period of acquisition, construction, or completion, *but for no period in excess of five years.*" (Emphasis added). This would allow the District to capitalize its interest payments for five years by making interest payments from the proceeds of the bonds. As discussed below, payments for interest and principal could be financed through an ad valorem property tax, if the general obligation bonds are issued to finance the acquisition or improvement of real property and are approved by two-thirds of the voters voting on the measure.

PUC §27451 provides that a bond measure under PUC § 27451 may be submitted "to the voters of any public agency or portion thereof..." Accordingly, a bond could cover both Special District 1 and Special District 2. It is important to note, however, the different vote requirements for bonding in the special transit service districts and bonding in the District as a whole. Section 27454, which applies to the Special Transit Service Districts, requires only a majority vote to authorize issuance of bonds in a special transit service district, whereas section 26211 requires a two-thirds vote of the electorate in order "to authorize the issuance of bonds under this chapter." Section 26211 was enacted in 1955, and section 27454 was enacted in 1959. It therefore appears that a bond measure brought in a single service district would require only majority vote, but a

measure that covers the entire District would require two-thirds.

The District can also issue revenue bonds (Cal. Pub. Util. Code §§ 26351-26352). A revenue bond is one that is supported by revenue from something like bus fares or bridge tolls. A revenue bond might also be backed further by a tax; bond counsel will need to be consulted to determine what kind of tax could be used, however. General obligation bonds can only be backed by an ad valorem tax, which must be “for the acquisition or improvement of real property” under Cal. Const. art. XIII A, § 1(b)(2). If the Board places the bond and tax questions on the same ballot, then the measure will require a two-thirds vote because it contains a special tax. If the bond question appears alone, then we still have the issue of which vote requirement applies under sections 27454 and 26211.

B. Property Taxes

There is an exception to Proposition 13 that allows the District to raise the ad valorem property tax but only to fund bonded indebtedness “for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition.” Cal. Const. art. XIII A, § 1(b)(2). If the *Board* submits a tax, it would be subject to a two-thirds vote under article XIII C of the state Constitution. However, the California Supreme Court has issued an opinion that the lower courts have interpreted to mean that *voter-initiated* taxes are not subject to article XIII C’s two-thirds vote requirement. To date, three court of appeal cases have upheld taxes that did not receive a supermajority vote based on that understanding: *City and County of San Francisco v. All Persons Interested in Proposition G*, 66 Cal.App.5th 1058 (2021); *Howard Jarvis Taxpayers Assn. v. City and County of San Francisco*, 60 Cal.App.5th 227 (2021); *City of Fresno v. Fresno Building Healthy Communities*, 59 Cal.App.5th 220 (2020). If the voters were to submit initiative petitions with enough signatures to qualify a tax, the vote requirement could be a simple majority. These questions about the applicable vote requirements will probably require further study if the Board is interested in proceeding with a tax, particularly if the tax were to be voter-initiated.

See California Department of Tax and Fee Administration, California City & County Sales & Use Tax Rates, www.cdtfa.ca.gov/taxes-and-fees/sales-use-tax-rates.htm (last accessed August 30, 2019).

The District could ask the voters to approve a parcel tax in addition to Measure VV/C1, which is limited to Special District 1. The uniformity provision under Public Utilities Code section 25892.1 requires that the tax be the same for every parcel, except that it can be different for unimproved parcels.

C. Sales and Use Taxes

Statewide sales and use tax rates are currently set by state law at 7.25%. See California Department of Tax and Fee Administration, California City & County Sales & Use Tax Rates, www.cdtfa.ca.gov/taxes-and-fees/sales-use-tax-rates.htm (last accessed August 30, 2019). In addition to the statewide tax rate, local government entities may impose local sales taxes. However, Revenue and Taxation Code section 7251.1 provides that the combined rate of all such taxes imposed in any county may not exceed 2%: “No tax shall be considered to be in accordance with this part if, upon its adoption, the combined rate in the county will exceed 2 percent.” Thus, without additional legislative authorization, the combined rate of tax in any jurisdiction cannot exceed 9.25%.

Because many of the cities in Alameda and Contra Costa Counties are already at or above the 9.25% limit, the

District likely would need legislation in order to pass a sales and use tax. Given that there is already a legislatively authorized .5% transportation sales tax in both Alameda and Contra Costa County, it would be possible to ask the Legislature to increase the amount, although that may be difficult politically.

Los Angeles County has also received special authority to levy a transportation sales tax. As summarized by the Senate Rules Committee, “[i]n 1987, the Legislature enacted SB 142 (Deddeh) which provided a generic process for individual counties to implement local sales taxes of up to 1% for transportation purposes Los Angeles County . . . established its local transportation sales taxes (two .5% sales taxes, 1% total) under the terms of separate legislation” “These taxes were initiated in 1981 and 1991 under terms of special legislation and after local voter approval, not the SB 142 generic provisions, and have no expiration date.” Senate Rules Committee Analysis of Senate Bill No. 314, 2003 Cal. Stats. ch. 785 (Sept. 9, 2003).

In 2003, SB 314 (Murray), authorized Los Angeles County Metropolitan Transportation Authority (“LACMTA”) to impose an additional transactions and use tax at a rate of up to 0.5%, for 6.5 years, pending voter approval. 2003 Cal. Stats. ch. 785. In 2008, AB2321 (Feuer) extended this 6.5-year transactions and use tax collection period to 30 years. 2008 Cal. Stats. ch. 302. In addition, AB 2321 required LACMTA to include specified projects and programs in its Long Range Transportation Plan and Expenditure Plan. Further, the legislation required LACMTA to use the tax revenue on transit operations; the funds cannot be used to supplant funds derived from other sources. The bill also capped LACMTA’s administrative costs at 1.5% of the revenues derived from the tax. Finally, the legislation required LACMTA to notify the Legislature prior to adopting amendments to its expenditure plan.

D. Other potential funding sources:

A tax on transportation network companies like Uber and Lyft would definitely require new legislation, but the Legislature has already provided that San Francisco may submit such a tax to the voters by enacting AB 1184 (2018 Cal. Stats. ch. 644), which added section 5446 to the Public Utilities Code. The Legislative Counsel’s digest for AB 1184 described the tax this way:

This bill would authorize the City and County of San Francisco, subject to applicable voter approval requirements, to impose a tax on each ride originating in the City and County of San Francisco provided by an autonomous vehicle, whether facilitated by a transportation network company or any other person, or by a participating driver in an amount not to exceed 3.25% of net rider fares, as defined, for a ride and 1.5% of net rider fares for a shared ride, as specified. The bill would also authorize the City and County of San Francisco to set a lower tax rate for net rider fares for a ride provided by a zero-emission vehicle. The bill would require moneys collected by the City and County of San Francisco from this tax to be dedicated to fund transportation operations and infrastructure within the City and County of San Francisco. The bill would require a tax imposed pursuant to this authority to expire no later than November 5, 2045.

With regard to a tax on rental cars, according to the National Council of State Legislatures, as of 2019, more than 40 states have imposed taxes or fees on the rental of automobiles, but California was not among them. See National Conference of State Legislators, Rental Car Taxes, <http://www.ncsl.org/research/fiscal->

policy/rental-car-taxes.aspx (last accessed November 18, 2021). There does not appear to be any legislation that authorizes fees on rental cars other than Government Code section 50474, which authorizes cities and counties to impose fees related to operation of airports. In *Alamo Rent-A-Car v. Board of Supervisors*, 221 Cal. App. 3d 198 (1990), the court of appeal upheld a fee on rental car companies for use of airport roads, but it was specific to Government Code section 50474. There is no reason why the Legislature could not authorize the District to pass a special tax on rental car transactions, just as it has with San Francisco's tax on transportation network companies, but there is no such legislation at this time.

ADVANTAGES/DISADVANTAGES:

There are no advantages or disadvantages to receiving this report.

ALTERNATIVES ANALYSIS:

The alternatives analysis is contained in the body of this report.

PRIOR RELEVANT BOARD ACTION/POLICIES:

None

ATTACHMENTS:

None

Prepared by:

Jill A. Sprague, General Counsel

In Collaboration with:

Ryan Lau, External Affairs Representative

Approved/Reviewed by:

Claudia Burgos, Director of Legislative Affairs & Community Relations

Beverly Greene, Executive Director of External Affairs, Marketing & Communications

Chris Andrichak, Chief Financial Officer

Linda A. Nemeroff, District Secretary

Michael A. Hursh, General Manager