

BILL: SB 732 (Allen, D-Santa Monica)
Introduced February 22, 2019
Amended March 27, 2019
Amended April 30, 2019

SUBJECT: SB 732 would create a special voting district in the South Coast Air Quality Management District jurisdiction in order to facilitate a ballot initiative to institute a transactions and use tax to help the region meet state and federal air quality standards.

STATUS: Pending in the Senate Appropriations Committee
Passed Senate Governance and Finance Committee 4-3

SUMMARY AS OF April 30, 2019:

SB 732 would create a special voting district in the South Coast Air Quality Management District (SCAQMD) jurisdiction, which includes all of Orange County and portions of Los Angeles, Riverside, and San Bernardino Counties. This voting district would facilitate a ballot measure to authorize a transactions and use tax of between 0.25 percent and one percent on all purchases of tangible personal property within the voting district. The new tax would not be subject to the statutory two percent transaction and use tax cap for each county. The ballot initiative could be instituted either upon the approval of a majority vote of the SCAQMD Board or by a citizen-led initiative.

Should the ballot initiative facilitated by the bill be successful, the revenues would be used to achieve state and federal ambient air quality standards. In addition, SB 732 indicates that the revenues could be used to accelerate the deployment of near-zero and zero-emission vehicles as well as alternative fuel charging infrastructure. Under the bill, up to 6.25% of the revenues collected from the new tax could be utilized to administer the potential revenues from a ballot measure. The legislation requires that the SCAQMD work with the California Department of Tax and Fee Administration to facilitate the collection of revenues from the ballot measure, should it be successful.

EFFECTS ON ORANGE COUNTY:

SB 732 would authorize a ballot initiative to pursue a new tax, as high as one percent, on all purchases of tangible personal property in Orange County in order to fund air quality improvements. The ballot initiative envisioned in this bill differs significantly from the types of successful revenue initiatives utilized by self-help transportation agencies throughout California. The tax that would be instituted under SB 732 would not be subject to the two percent countywide cap in current law, whereas Measure M2, Orange County's half-cent sales tax dedicated to transportation improvements, is subject to the two percent countywide cap. In addition, SB 732 does not include any type of citizen oversight effort. Measure M2 provides for multiple oversight committees to adequately protect Orange County taxpayers, and most, if not all, self-help counties across the state share this commitment to taxpayer oversight. The bill would allow for up to 6.25 percent of potential

revenues to be used for administrative costs, although it is unclear what types of administrative costs would be subject to this statutory cap.

Perhaps the most concerning difference between the ballot initiative envisioned by SB 732 and other self-help initiatives is that the legislation does not include any type of expenditure plan. Measure M2 includes a detailed expenditure plan, as do a large majority of the other self-help transportation initiatives in California. When the Metropolitan Transportation Commission pursued a nine-county revenue initiative, the enabling legislation, SB 595 (Chapter 650, Statutes of 2017), included a detailed list featuring 35 subsections discussing specific funding uses. While the potential revenues from the ballot measure may benefit the Orange County, it is difficult to properly evaluate the proposal without a detailed expenditure plan outlining the role that county transportation commissions would play in allocating these funds and how much of the funding would benefit each county.

Another concerning element of the bill is the lack of any return-to-source language. The creation of a four-county voting district means that tax revenue collected in Orange County could be used for the benefit of the surrounding counties. The bill does not contain any language to ensure that the air quality funding that would be distributed from the ballot initiative is consistent with the amount of revenue collected from each of the four counties within the voting district. As such, it is possible that Orange County could end up receiving significantly less funding than the amount of revenue collected from purchases made in the county. Without any return-to-source language, the bill could be using Orange County tax dollars to subsidize air quality improvements in other jurisdictions.

The SCAQMD has indicated that the revenues would be used to execute the 2016 Air Quality Management Plan. This document predates the kind of revenue proposal outlined in SB 732 and fails to outline the investments from the proposed tax measure that would benefit OCTA's operations. While federal transportation funding could be jeopardized if the region does not meet its air quality goals, the legislation does not provide the kind of detail necessary to adequately evaluate the benefits of the proposal against the cost levied on Orange County taxpayers. The SCAQMD has also indicated the desire to use the revenues to "accelerate" the deployment of near-zero and zero-emission vehicles, which means that the funding would not be available to comply with existing environmental regulations. Specifically, this interpretation means that complying with the recently enacted Innovative Clean Transit regulation, which mandates the purchase of zero-emission transit buses, would not be an eligible use of the potential revenues.

While the bill does not specify how the ballot measure must proceed, the SCAQMD has indicated a preference for a citizen-led ballot initiative. Under the recent California Supreme Court decision in *California Cannabis Coalition v. City of Upland*, citizen-led initiatives only require a simple majority vote, as opposed to the two-thirds threshold required when local governments pursue a new revenue measure. The ballot measure envisioned in SB 732 would be an extension of the *Upland* decision to a multi-jurisdiction initiative, which could result in additional legal challenges that could create uncertainty about the revenues created by a potential ballot measure.

An OPPOSE position on SB 732 is consistent with OCTA's 2019-2020 State Legislative Platform principle to "Oppose levying new and/or increase in gasoline taxes or user fees, including revenue increases on fuel consumption categorized as charges, fees, revenue enhancements, or similar classifications. Consideration of such efforts shall occur when a direct nexus is determined to exist between revenues and transportation projects, and additional revenues are to be controlled by the county transportation commission." The Orange County Board of Supervisors and the San Bernardino County Transportation Authority are also opposed to SB 732.

OCTA POSITION:

Staff recommends: OPPOSE

AMENDED IN SENATE MARCH 27, 2019

SENATE BILL

No. 732

Introduced by Senator Allen

February 22, 2019

~~An act to amend Section 7251 of the Revenue and Taxation Code, relating to taxation. An act to amend Section 317 of, and to add Section 9314.5 to, the Elections Code, to add Article 9 (commencing with Section 40560) to Chapter 5.5 of Part 3 of Division 26 of the Health and Safety Code, and to add Section 7252.3 to the Revenue and Taxation Code, relating to tax.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 732, as amended, Allen. ~~Transactions and use tax. Transactions and use tax: South Coast Air Quality Management District.~~

(1) Existing law establishes the South Coast Air Quality Management District vested with the authority to regulate air emissions from stationary sources located in the South Coast Air Basin and establishes a district board to govern the district.

This bill would authorize the south coast district board to impose a transactions and use tax within the boundaries of the south coast district, as specified, with the moneys generated from the transactions and use tax to be used to supplement existing revenues being used for south coast district purposes, as specified.

(2) This bill would make legislative findings and declarations as to the necessity of a special statute for the South Coast Air Quality Management District.

~~Existing law authorizes cities, counties, and certain districts to impose a transactions and use tax in accordance with procedures set forth in~~

~~the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law.~~

~~This bill would make a technical, nonsubstantive change to the Transactions and Use Tax Law.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 317 of the Elections Code is amended to*
2 *read:*

3 317. (a) “District,” for purposes of initiative and referendum
4 under Chapter 4 (commencing with Section 9300) of Division 9,
5 includes any regional agency that has the power to tax, to regulate
6 land use, or to condemn and purchase land.

7 (b) “District,” for purposes of Section 1405 and initiative under
8 Article 1 (commencing with Section 9300) of Chapter 4 of Division
9 9, includes the South Coast Air Quality Management District.

10 SEC. 2. Section 9314.5 is added to the Elections Code, to read:
11 9314.5. (a) For purposes of this section, the following terms
12 have the following meanings:

13 (1) “Legal counsel for the south coast district” means the
14 attorney designated under the south coast district’s conflict of
15 interest code as its legal officer pursuant to Article 3 (commencing
16 with Section 87300) of Chapter 7 of Title 9 of the Government
17 Code.

18 (2) “South coast district” means the South Coast Air Quality
19 Management District, established pursuant to Section 40410 of
20 the Health and Safety Code.

21 (b) (1) Whenever a south coast district measure is submitted
22 to the voters of the south coast district, the south coast district
23 elections official shall transmit a copy of the measure to the legal
24 counsel for the south coast district. Except as otherwise provided
25 in subdivision (c), the legal counsel for the south coast district
26 shall prepare an impartial analysis of the measure that does all
27 of the following:

28 (A) Shows the effect of the measure on the existing law.

29 (B) Shows the operation of the measure.

1 (C) Includes a statement indicating whether the measure was
2 placed on the ballot by a petition signed by the requisite number
3 of voters or by the governing body of the south coast district.

4 (D) Is printed preceding the arguments for and against the
5 measure.

6 (E) Does not exceed 500 words in length.

7 (2) If the entire text of the measure is neither printed on the
8 ballot nor in the voter information guide, there shall be printed in
9 no less than 10-point bold type immediately below the impartial
10 analysis a legend that reads substantially as follows:

11
12 “The above statement is an impartial analysis of Ordinance or
13 Measure _____. If you desire a copy of the ordinance or measure,
14 please call the south coast district elections official’s office at
15 (insert telephone number) and a copy will be mailed at no cost to
16 you.”

17
18 SEC. 3. Article 9 (commencing with Section 40560) is added
19 to Chapter 5.5 of Part 3 of Division 26 of the Health and Safety
20 Code, to read:

21
22 Article 9. Ballot Measure Elections for Transactions and Use
23 Taxes
24

25 40560. (a) An ordinance to levy, increase, or extend a
26 transactions and use tax authorized pursuant to this article, Article
27 1 (commencing with Section 9300) of Chapter 4 of Division 9 of
28 the Elections Code, and the Transactions and Use Tax Law (Part
29 1.6 (commencing with Section 7251) of Division 2 of the Revenue
30 and Taxation Code) may be enacted in the south coast district at
31 a rate of 0.25 percent, or a multiple of that percentage not to
32 exceed a maximum of 1 percent, through either of the following:

33 (1) Approval by a majority of vote the south coast district board
34 and placement on the ballot for subsequent approval by the south
35 coast district’s electorate in conformance with other applicable
36 statutory requirements and Article XIII C of the California
37 Constitution.

38 (2) Placement on the ballot by a voter initiative for subsequent
39 approval by the south coast district’s electorate in compliance

1 with other applicable statutory requirements and Article XIII C of
2 the California Constitution.

3 (b) The south coast district board may levy, increase, or extend
4 more than one transactions and use tax pursuant to this section if
5 the adoption of the transaction and use tax conforms with both of
6 the following:

7 (1) The requirements of this article.

8 (2) The requirements of the Transactions and Use Tax Law
9 (Part 1.6 (commencing with Section 7251) of Division 2 of the
10 Revenue and Taxation Code).

11 (c) An ordinance that is not for the adoption, modification, or
12 amendment of a transactions and use tax shall not be enacted in
13 the south coast district.

14 40562. (a) Notwithstanding Section 7251.1 of the Revenue
15 and Taxation Code, a transactions and use tax ordinance
16 applicable within the boundaries of the south coast district adopted
17 pursuant to Section 40560 may exceed the combined tax rate limit
18 of Section 7251.1 of the Revenue and Taxation Code.

19 (b) A transactions and use tax ordinance adopted pursuant to
20 this article shall be operative on the first day of the first calendar
21 quarter commencing more than 150 days after the adoption of the
22 ordinance by the electorate in compliance with any applicable
23 constitutional or statutory requirements.

24 (c) (1) Prior to the operative date of the transactions and use
25 tax ordinance, the south coast district shall contract with the
26 California Department of Tax and Fee Administration, or other
27 state agency provided for by law, to perform all functions related
28 to the administration and operation of the transactions and use
29 tax ordinance.

30 (2) Notwithstanding Section 7272 of the Revenue and Taxation
31 Code, both of the following apply:

32 (A) The costs to be covered by the contract required pursuant
33 to this subdivision may include the services described in Section
34 7272 of the Revenue and Taxation Code for preparatory work up
35 to the operative date of the ordinance. A dispute as to the amount
36 of the costs shall be resolved in the same manner as provided for
37 in Section 7272 of the Revenue and Taxation Code.

38 (B) The maximum amount of preparatory costs incurred may
39 exceed those costs as described in paragraph (1) if the increased
40 amount reflects necessary preparatory costs. The maximum amount

1 of all preparatory costs to be paid by the south coast district to
2 the California Department of Tax and Fee Administration shall
3 not exceed _____ dollars (\$ _____).

4 (3) (A) Within 45 days from the date a transactions and use tax
5 ordinance is adopted pursuant to this article, the south coast
6 district shall provide the California Department of Tax and Fee
7 Administration with both of the following:

8 (i) A list of the ZIP Codes that are located within the boundaries
9 of the south coast district but are located in areas noncoterminous
10 with city or county borders of the south coast district.

11 (ii) A list of ZIP Codes of areas that are located partly within
12 and partly outside of the boundaries of the south coast district.

13 (B) The south coast district shall maintain the ZIP Code lists
14 specified in subparagraph (A) on its internet website.

15 (C) For those ZIP Codes that are located partly within the
16 boundaries of the south coast district, the California Department
17 of Tax and Fee Administration may, as necessary, provide to the
18 south coast district a list of any addresses for which the California
19 Department of Tax and Fee Administration requires a
20 determination as to whether the address is located or is not located
21 within the boundaries of the south coast district. The south coast
22 district shall respond to the California Department of Tax and Fee
23 Administration within 30 days of the request.

24 40564. (a) The south coast district shall use any moneys
25 received by the south coast district pursuant to this article to
26 supplement existing revenues being used for south coast district
27 purposes.

28 (b) All moneys received by the south coast district pursuant to
29 this article shall be used for financial incentives and programs to
30 implement the south coast district's adopted plans to achieve state
31 and federal ambient air quality standards and to accelerate the
32 deployment of all of the following:

33 (1) Zero-emission, near-zero-emission, or cleanest commercially
34 available mobile and stationary equipment that reasonably meets
35 the needs of the operators of that equipment.

36 (2) Alternative fueling and charging infrastructure.

37 (c) No more than 6.25 percent of the total revenues received
38 pursuant to this article may be used for administrative costs in
39 implementing the programs authorized pursuant to this article.

1 (d) Beginning the year after the first calendar year in which
2 moneys from the transactions and use tax ordinance are made
3 available to the south coast district pursuant to this article, the
4 south coast district shall include in its annual report to the
5 Legislature required pursuant to Section 40452 both of the
6 following:

7 (1) A report of the projects funded from moneys from the
8 transactions and use tax ordinance for the prior calendar year.

9 (2) The expected emissions reductions to be obtained from
10 projects funded from moneys from the transactions and use tax
11 ordinance.

12 40568. (a) (1) The south coast district board may appoint a
13 district elections official for the purposes of overseeing,
14 supervising, or conducting an election required pursuant to Section
15 40560.

16 (2) The south coast district's elections official shall oversee,
17 supervise, or conduct an election required pursuant to Section
18 40560 and the applicable procedures set forth in Article 1
19 (commencing with Section 9300) of Chapter 4 of Division 9 of the
20 Elections Code.

21 (b) (1) The south coast district board may submit a resolution
22 to the board of supervisors of a county that is entirely or partly
23 located within the boundaries of the south coast district to provide
24 services that are reasonable and necessary to conduct an election
25 in the south coast district. Upon the presentation of that resolution
26 by the south coast district board, the applicable county elections
27 official shall provide those services to the south coast district, and
28 those services shall be performed by the county elections official
29 in coordination and consultation with the south coast district's
30 elections official.

31 (2) No later than 61 days before an election on the transactions
32 and use tax ordinance authorized pursuant to this article, the
33 county elections official shall work with the south coast district's
34 elections official to set and finalize a list of precincts or
35 consolidated precincts, as applicable.

36 (3) The south coast district shall reimburse in full each county
37 that is located entirely or partly within the boundaries of the south
38 coast district for the reasonable cost of the services performed by
39 the county elections official at the request of the south coast district

1 or by agreement upon the presentation of a bill to the south coast
2 district.

3 (4) Unless otherwise provided by law, election and
4 election-related services shall be conducted by each county as
5 provided by the Elections Code for districts.

6 (c) The regular election date for the south coast district shall
7 be the date of the statewide general election as provided for in
8 Section 1200 of the Elections Code.

9 SEC. 4. Section 7252.3 is added to the Revenue and Taxation
10 Code, to read:

11 7252.3. "District," as used in this part, also means the South
12 Coast Air Quality Management District if authorized to impose
13 transactions and use taxes pursuant to this part and Article 9
14 (commencing with Section 40560) of Chapter 5.5 of Part 3 of
15 Division 26 of the Health and Safety Code.

16 SEC. 5. The Legislature finds and declares that a special
17 statute is necessary and that a general statute cannot be made
18 applicable within the meaning of Section 16 of Article IV of the
19 California Constitution because of the unique nature of the air
20 quality problem in the South Coast Air Quality Management
21 District, which has the worst ozone levels in the nation.

22 SECTION 1. ~~Section 7251 of the Revenue and Taxation Code~~
23 ~~is amended to read:~~

24 ~~7251. This part shall be known and may be cited as the~~
25 ~~"Transactions and Use Tax Law."~~