



REPORT TO LAW & LEGISLATION COMMITTEE City of Sacramento

5

915 I Street, Sacramento, CA 95814-2671

STAFF REPORT
May 19, 2009

Honorable Members of the
Law and Legislation Committee

Subject: Legislative Position: Oppose SB 27 (Hancock) – Local Agencies: Sales and Use Tax

Location/Council District: Citywide

Recommendation:

Staff recommends that the Law and Legislation Committee adopt an oppose position on SB 27 (Hancock) relating to sales and use tax.

Contact: Beth Tincher, 808-7730

Presenters: Beth Tincher, Senior Project Manager

Department: Economic Development

Division: Downtown Development Group

Organization No: 18000

Issue:

There is a continuing need for California communities to use a number of economic development tools to attract and retain business to ensure the economic stability of these communities. Now more than ever, local agencies are assuming entrepreneurial roles, taking more risk to provide desired financial and regulatory security for new business. Economic development tools in the form of various aid packages, such as tax increment financing, fee deferrals, regulatory relief, and tax credits are often powerful tools that allow cities to gain a competitive edge in creating successful public/private partnerships.

Committee/Commission Action: None.

Financial Considerations: SB 27 would have a negative financial effect by eliminating a significant tool that allow cities and counties the opportunity to negotiate financial benefits related to locating big box retailers and vehicle sales.

Environmental Considerations: None

Policy Considerations: This bill is inconsistent with the City's Strategic Plan to strengthen the City business Climate. The bill is in opposition to Economic Development's core function to attract, expand and retain business in the City of Sacramento.

Rationale for Recommendation:

The Bradley-Burns Local Sales and Use Tax Law authorizes counties to impose a 1% sales tax for items sold by retailers in the County or for items purchased outside the county for use in the County. Cities can impose a .75% sales and use tax which is credited against the county's tax. The remainder of the County rate (.25%) is earmarked for county transportation. Bradley-Burns Sales and Use tax must be allocated on a "situs" bases to the place of business.

This bill prohibits vehicle dealerships and big box retailers from relocating to another jurisdiction if it results in loss of tax revenue to the jurisdiction in which it was originally located. Although the City already has adopted an agreement with the County to not compete for auto dealerships, this could impact the City's ability to attract big box retailers. Local agencies utilize a range of tools to attract major business opportunities to their communities. This bill severely limits Sacramento's financing opportunities locating big box retailers in the City of Sacramento.

The proposed law further limits a local agencies ability to attract retailers in the following way:

Major provisions of SB 27 (Hancock/Torlakson/Sales)

- Prohibits a City and/or County from entering into an agreement to relocate a big box retailer or vehicle dealer or taking any action that would result, directly or indirectly, in the payment, transfer, diversion or rebate of any amount of local tax proceeds when the agreement results in:
 - A substantial reduction in the amount of tax proceeds received by another local agency from a retailer within the other local agency and the retailer continues to maintain a physical presence with the other local agency
 - A reduction in use tax proceeds that are distributed to a local agency through one or more countywide pools.
 - A retailer that expands its operation into a local jurisdiction with the result that the retailer is conducting a comparable operation in both local agencies.
 - The use of tax proceeds by a local agency to reimburse a retailer for the construction of public works improvements.
 - An agreement to pay or rebate local tax revenue relating to company to bring in big box or vehicle dealer.

Staff recommends an oppose position on SB 27.

Respectfully Submitted by: Beth Tincher
Beth Tincher
Senior Project Manager

Approved by: David Spaur
David Spaur
Economic Development Director

Recommendation Approved:
Patti Bisharat
Patti Bisharat
Director of Government Affairs

Table of Contents:

Pg	1	Report
Pg	4	Draft Position Letter
Pg	5	Bill Text
Pg	8	Bill Analysis

May 19, 2009

The Honorable Loni Hancock
Member, California State Assembly
State Capitol, Room 3092
Sacramento, CA 95814
ATTN: Legislative Director

Subject: Oppose SB 27 (Hancock) – Local Agencies: Local Sales and Use Tax

Dear Senator Hancock:

On behalf of the City of Sacramento, and as chair of the Law and Legislation Committee, I am writing to inform you to oppose SB 27. There is a continuing need for California communities to use a number of economic development tools to attract and retain business to ensure the economic stability of the community. Now more than ever, cities are assuming entrepreneurial roles taking the risk to provide desired financial and regulatory security for new business. Economic development tools in the form of various aid packages, such as tax increment financing, fee deferrals, regulatory relief, and tax credits are powerful tools that allow cities to gain a competitive edge in creating successful public/private partnerships. This bill impacts the City's ability to attract big box retailers.

Sincerely,

SANDY SHEEDY, Chair
Law and Legislation Committee

Cc: Senator Darrell Steinberg
Assembly Member Tom Torlakson
Assembly Member Mary Salas
Mayor Johnson and Members of City Council
David Jones, Emanuels and Jones and Associates

BILL NUMBER: SB 27 AMENDED
BILL TEXT

AMENDED IN SENATE FEBRUARY 23, 2009

INTRODUCED BY Senator Hancock
(Coauthors: Assembly Members Torlakson and Salas)

DECEMBER 2, 2008

An act to add Section 53084.5 to the Government Code, relating to local government, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 27, as amended, Hancock. Local agencies: sales and use tax: reallocation.

Existing law prohibits a redevelopment agency or a local agency, as defined, from providing any form of financial assistance to a vehicle dealer or big box retailer, or a business entity that sells or leases land to a vehicle dealer or big box retailer, that is relocating from the territorial jurisdiction of one community or local agency to the territorial jurisdiction of another community or local agency, as specified.

This bill would , on or after the date this act takes effect, prohibit a local agency from entering into any form of agreement with a retailer, a consultant or agent representing a retailer, or any other person that would involve the payment, transfer, diversion, or rebate of any amount of Bradley-Burns local tax proceeds for any purpose if the agreement results in a reduction in the amount of revenue that is received by another local agency from a retailer that is located within the territorial jurisdiction of that other local agency, and the retailer continues to maintain a physical presence within the territorial jurisdiction of that other local agency, with specified exceptions.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. In enacting this measure, the Legislature finds and declares that the facts associated with, and damages caused to, cities by the economic development agreements entered into between the cities and consulting companies, referred to as developers, that provide, under specified circumstances, for the disbursement to the consulting company of an amount of the local sales tax attributable to sales made within those cities by new retailers over a period of time, has resulted in an unjust reallocation of local Bradley-Burns sales and use taxes away from several cities.

SEC. 2. Section 53084.5 is added to the Government Code, to read:

53084.5. (a) ~~On or after the date the~~ act adding this section takes effect, a local agency shall not enter into any form of agreement that would result, directly or indirectly, in the payment, transfer, diversion, or rebate of any tax revenue resulting from the imposition of a sales and use tax under the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) to any person for any purpose when both of the following apply:

(1) The agreement results in a reduction in the amount of revenue that is received by another local agency from a retailer that is located within the territorial jurisdiction of that other local agency from the tax proceeds collected under the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code). This subdivision shall not apply to a reduction in the use tax proceeds that are distributed to that other local agency through one or more countywide pools.

(2) The retailer continues to maintain a physical presence within the territorial jurisdiction of that other local agency. This subdivision shall not apply if the retailer has expanded its operations into another jurisdiction with the result that the retailer is conducting a comparable operation within the jurisdiction of both local agencies.

(b) For the purposes of this section, the following definitions have the following meanings:

(1) "Local agency" means a chartered or general law city, a chartered or general law county, or a city and county.

(2) "Retailer" means a retailer as defined by Section 6015 of the Revenue and Taxation Code.

(3) "Physical presence" means the lease or ownership of any real property for the purpose of carrying on business operations.

(c) This section shall not apply to local tax proceeds provided by a local agency to a retailer if the funds are used to reimburse the retailer for the construction of public works improvements that serve all or a portion of the territorial jurisdiction of the local agency.

(d) This section shall not apply to an agreement to pay or rebate any tax revenue resulting from the imposition of a sales and use tax under the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) relating to a buying company. "Buying company" means, and is limited to, a legal entity that is separate from another legal entity that owns, controls, or is otherwise related to, the buying company and which has been created for the purpose of performing administrative functions, including acquiring goods and services for the other entity, as defined by the State Board of Equalization, and meets requirements of a buying company under Sections 6066 to 6075, inclusive, of the Revenue and Taxation Code, and the regulations adopted pursuant to those sections.

(e) This section shall not apply to any agreement by a local agency to pay or rebate any use tax revenue resulting from the imposition of a sales and use tax under the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) relating to a use tax direct payment permit issued under Section 7051.3 of the Revenue and

Taxation Code.

(f) Nothing in this section shall be interpreted to limit the ability of a local agency to contract with or otherwise enter into an agreement pursuant to subdivision (b) of Section 7056 of the Revenue and Taxation Code.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the necessary statutory changes to address the unjust reallocation of local sales and use taxes away from several cities, at the earliest possible time, it is necessary that this act take effect immediately.

BILL ANALYSIS

SENATE RULES COMMITTEE	SB 27
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 651-1520 Fax: (916)	
327-4478	

THIRD READING

Bill No: SB 27
 Author: Hancock (D)
 Amended: 2/23/09
 Vote: 27 - Urgency

SENATE LOCAL GOVERNMENT COMMITTEE : 5-0, 3/4/09
 AYES: Wiggins, Cox, Aanestad, Kehoe, Wolk

SUBJECT : Local agencies: sales and use tax:
 reallocation

SOURCE : Author

DIGEST : This bill prohibits a city, county, or city and county, on or after the bills effective date, from entering into any form of agreement or taking any action that results, directly or indirectly, in the payment, transfer, diversion or rebate of any amount of Bradley-Burns local tax proceeds to any person for any purpose when (1) the agreement results in a substantial reduction in the amount of Bradley-Burns tax proceeds received by another local agency from a retailer within that other local agency, and (2) the retailer continues to maintain a physical presence and location within that other local agency.

ANALYSIS : The Bradley-Burns Local Sales and Use Tax Law authorizes counties to impose a one percent tax on the sales price of tangible personal property sold at retail in the county, or purchased outside the county for use in the county. Cities can impose a 0.75 percent sales and use tax which is credited against the county's tax. The remainder of the county rate (0.25 percent) is earmarked for county transportation purposes.

Except for sales of jet fuel, Bradley-Burns sales taxes must be allocated, on a "situs" basis, to the place of business of the retailer. Generally, this is the place where the transaction occurs. However, if a seller has more than one place of business and the sales and delivery of a product occur at separate locations, Board of Equalization regulations require that the sales be allocated to the site of the principal sales negotiations. This is usually the company's sales office.

The situs-based system for allocating sales tax revenues leads to competition among cities and counties to attract land uses that generate local revenues and shun land uses that need expensive public services. This "fiscalization of land use" distorts local land use decisions by emphasizing tax revenues, but discounting traffic, air quality, open space, and affordable housing.

This bill prohibits a city, county, or city and county, on or after the bill's effective date, from entering into any form of agreement or taking any action that results, directly or indirectly, in the payment, transfer, diversion or rebate of any amount of Bradley-Burns local tax proceeds to any person for any purpose when:

1. The agreement results in a substantial reduction in the amount of Bradley-Burns tax proceeds received by another local agency from a retailer within that other local agency.
2. The retailer continues to maintain a physical presence and location within that other local agency.

This bill also specifies that its provisions do not apply to:

1. A reduction in use tax proceeds that are distributed to a local agency through one or more countywide pools.
2. A retailer that expands its operations into another jurisdiction with the result that the retailer is conducting a comparable operation in both local agencies.
3. Bradley-Burns local tax proceeds provided by a local agency to a retailer if those proceeds are used to reimburse the retailer for the construction of public works improvements that serve all or a portion of the territorial jurisdiction of the local agency.
4. Any agreement to pay or rebate Bradley-Burns local tax revenue relating to a "buying company," as defined in specified statutes and regulations.
5. Any agreement to pay or rebate Bradley-Burns local use tax revenue relating to a use tax direct payment permit.

Comments

Some large retailers take advantage of the fiscalization of land use to play one community against others. They ask local officials to give them subsidies so they can relocate, moving their sales tax revenues from a "sending" community to a "receiving" community. The receiving community gets new revenue, but spends some of it on the retailer, the subsidy to the retailer lowers its costs, and the sending community suffers the revenue loss.

Local agencies cannot give financial assistance to a big box retailer or vehicle dealership that relocates from another local agency within the same market area [SB 114 (Torlakson), Chapter 781, Statutes of 2003]. However, local officials continue to engage in other forms of competition involving sales taxes. For example, a county or city can offer a sales tax rebate to a business to consolidate all of its California sales offices into that county or city. The Cities of Livermore, Industry, and San Diego are losing millions of dollars in Bradley-Burns sales tax revenues because a major retailer in those cities consolidated its sales activities into the City of Fillmore. Under an agreement between the City of Fillmore and a private consulting firm, the firm receives 85 percent of the Bradley-Burns revenues that are attributable to a retailer that works with the firm to relocate sales offices into Fillmore. In turn, the majority of the 85 percent gets rebated to the relocated retailer.

Livermore and Industry city officials want the Legislature to prohibit counties or cities from entering into similar Bradley-Burns sales tax rebate agreements that draw sales tax revenues away from other communities.

This bill imposes a narrowly-tailored prohibition on the use of Bradley-Burns tax rebates. This bill allows Bradley-Burns rebates in the case of a legitimate business expansion into a new community, and to help pay for the costs of beneficial infrastructure, while preventing the kind of relocation scheme that victimized the Cities of Livermore, Industry, and San Diego.

Sales office consolidation schemes are a manifestation of the aggressive competition for sales tax dollars that local officials engage in as a result of the situs-based sales tax allocation system. The Legislative Analyst's Office (LAO) recently suggested replacing situs-based allocation with a population based allocation system to reduce incentives for local governments to use their economic development powers to promote retail developments. The LAO also suggested that replacing local government sales tax revenues with a different tax base could achieve similar results.

Prior legislation . This bill is nearly identical to AB 697 (Hancock, 2008), which Governor Schwarzenegger vetoed,

saying that the bill was not a high priority.

FISCAL EFFECT : Appropriation: No Fiscal Com.: No
Local: No

SUPPORT : (Verified 3/5/09)

American Federation of State, County, and Municipal
Employees
California Narcotics Officers Association
California Peace Officers Association
California Police Chiefs Association
California Professional Firefighters
California State Association of Counties
City of Industry
City of Livermore
League of California Cities
Livermore Police Officers Association.
Livermore-Pleasanton Firefighters Local 1974
MuniServices

AGB:mw 3/5/09 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****