What Today’s Public Works Professionals Need to Know About Municipal Finance

Michael Coleman
coleman@muniwest.com
530.219.3691
Local Streets and Roads Revenues
Local Streets and Roads Revenues

Str&Hwy2103
Previously price-based
Gasoline Excise Tax
reset to @17.3¢ on 7/1/19
Now 21.3¢

Str&Hwy2104-2108
Base rate
Gasoline Excise Tax 18¢
Now 22.1¢

Gasoline Excise Tax +12¢
Now 14.8¢
Transportation Improvement Fee
$25 to $175/year
depending on auto value
Now $29-206

Diesel Excise Tax +20¢/gal
Now 24.6¢

ZEV Registration Fee
$108/yr on 2020 models / later

Local $ to
HUTA
Local $ to
RMRA &
grants

CaliforniaCityFinance.com
Local Streets and Roads $ to Cities and Counties


- Road Maintenance & Rehabilitation Account
- H.U.T.A.
- §2103 cities & counties
- §2104 counties
- §2105 cities & counties
- §2106
- §2107 cities

PCRF loan repayment

8.1% growth
8.4%
12.3%
3%
3%
Taxes, Fees and the Rest
Key Concepts
Cities Vary ... Counties Vary ... Special Districts Vary ... and so do their finances

✓ Geography: proximity, climate, terrain, access
✓ Community Character / Vision: Land use
✓ Size – urban / rural
✓ Governance / service responsibilities
  full service city - vs. - not full service city
✓ Counties – amount of urban development in unincorporation

❖ Statewide generalizations often mask trends among sub-groups
Taxes

☑ Charges which pay for public services, facilities that provide general benefits. No need for direct relationship between a taxpayer’s benefit and tax paid.

☑ Cities may impose any tax not otherwise prohibited by state law.
   (Gov Code § 37100.5)

☑ The state has reserved a number of taxes for its own purposes including:
   cigarette taxes, alcohol taxes, personal income taxes.

☑ General & Special
   - General Tax - revenues may be used for any purpose.
     Majority voter approval required for new or increased local tax
   - Special Tax - revenues must be used for a specific purpose.
     2/3 voter approval required for new or increased local tax
     Parcel tax - requires 2/3 vote
Any levy, charge or exaction of any kind imposed by a local government, is a tax except:

- **User Fees:** for a privilege/benefit, service/product *
  Planning permits, street closure permits, parking permits, user fees, copying fees, recreation classes, etc.

- **Regulatory Fees:** regulation, permits, inspections *
  Permits for regulated commercial activities (e.g., dance hall, bingo, card room, check cashing, taxi, massage parlor, firearm dealers, etc.); fire, health, environmental, safety permits; pet licenses; bicycle licenses.

- **Rents:** charge for entrance, use or rental of government property
  Facility/room rental fees, room rental fees, equipment rental fees, on and off-street parking, tolls, franchise, park entrance, museum admission, zoo admission, tipping fees, golf green fees, etc.

- **Penalties for illegal activity, etc.**
  Parking fines, late payment fees, interest charges and other charges for violation of the law.

- **Charges imposed as a condition of property development**
  Construction permits, development impact fees, etc.

- **Assessments and property related fees** imposed per Cal Const Article XIII D. (Prop218)

- **A payment that is not “imposed by a local government”**
  Includes payments made by voluntary contract/ agreement not otherwise “imposed” by a government.

* Fee may not exceed reasonable costs.
* Service/product/benefit may not be provided to those not charged.

California Constitution per Prop218(1996), Prop26(2010), etc.
# Taxes and Fees/etc. Approval Requirements

(California Constitution)

<table>
<thead>
<tr>
<th></th>
<th>TAX- General</th>
<th>TAX- Parcel or Special (earmarked)</th>
<th>G.O.BOND (w/tax)</th>
<th>Fee / fine / rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>City / County</td>
<td>Majority voter approval</td>
<td>Two-thirds voter approval</td>
<td>Two-thirds voter approval</td>
<td>Majority of the governing board.*</td>
</tr>
<tr>
<td>Special District</td>
<td>n/a</td>
<td>Two-thirds voter approval</td>
<td>Two-thirds voter approval</td>
<td>Majority of the governing board.*</td>
</tr>
<tr>
<td>K-14 School</td>
<td>n/a</td>
<td>Two-thirds voter approval (parcel tax)</td>
<td>55% voter approval*</td>
<td>Majority of the governing board.*</td>
</tr>
<tr>
<td>State</td>
<td>For any law that will increase taxes of any taxpayer, two-thirds of each house of the Legislature ...or majority of statewide voters.</td>
<td>Statewide majority voter approval</td>
<td>Statewide majority voter approval</td>
<td>Majority of each house.</td>
</tr>
</tbody>
</table>
California City Revenues

Source: Author's computations from California State Controller 2014-15 data. Does not include the City/County of San Francisco.
Discretionary Revenues and Spending

Typical Full Service City

<table>
<thead>
<tr>
<th>Revenues</th>
<th>Expenditures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property Tax</td>
<td>Fire</td>
</tr>
<tr>
<td>Sales &amp; Use Tax</td>
<td>Police</td>
</tr>
<tr>
<td>Franchises</td>
<td>Parks&amp;Rec</td>
</tr>
<tr>
<td>Utility User Tax</td>
<td>Library</td>
</tr>
<tr>
<td>BusnLic Tax</td>
<td>Streets</td>
</tr>
<tr>
<td>Hotel Tax</td>
<td>Planning</td>
</tr>
<tr>
<td>Other</td>
<td>Other</td>
</tr>
</tbody>
</table>

Source: Coleman Advisory Services computations from State Controller reports
Counties are hybrid local/state
- **state/federal programs:** Aid to families (CalWORKS), food stamps, foster care, In-Home Support Services (IHSS), alcohol & drug treatment
- **countywide services:** jails, courts, elections, property tax collection & allocation
- **“city” services to unincorporated areas**

Counties have
- more mandates,
- less discretionary $, and
- are more vulnerable to state budgetary action

**Source:** Author’s computations from California State Controller 2014-15 data. Includes the City/County of San Francisco.
**Franchise Fees**

**Jacks v. City of Santa Barbara (2017 Supreme Court of Calif):**

City’s franchise fee on Southern California Edison was not a tax requiring voter approval. However, fees for use of government property must prove some reasonable relationship to the value of the rights the franchise confers.
Franchise Fees

Zolly v. Oakland:
Questions:
- Standing? Franchise fee is on hauler – not the apartment owner plaintiffs
- Prop 26 Use of Government Property exception?
- Franchise adopted by agreement ... not “imposed” so as to trigger Proposition 26?
- Franchise Fee measures the implied “benefit” of use of rights of way (charge for benefit exception). Appellate court (2020) found a lack of relationship.
Zolly v. Oakland: Supreme Court of Calif (2022) 13 Cal.5th 780

Ruling

• apartment owners had standing because they bore economic incidence of fee
• Prop. 26 exception for use of property limited to tangible property, not franchise itself
• Fee was “imposed” so as to trigger Prop. 26 because it was established by legal authority
• Oakland can try to prove at trial that haulers get unusual rights in rights-of-way that are proportionate in value to franchise fee.
Colantuono’s* tips for protecting garbage franchise fees:

✓ Avoid controversy if possible

✓ Make a record that haulers get rights in rights-of-way that others do not (like the right to place bins in the street once a week)

✓ Make a record that the value of those rights is at least roughly proportionate to the franchise fee

✓ Have a cost-of-service study in your record; consider hiring a consultant, and have a lawyer review it

✓ Separately cost regulatory fees (like AB 939 compliance fees)

*Colantuono, Highsmith & Whatley, PC. www.chwlaw.us
Huge Threat to Public Services

Draconian, Impractical Ballot Initiative Headed to the November 2024 Ballot
Initiative #21-0042A1: Limits Ability of Voters and State and Local Governments to Raise Revenues for Government Services. Initiative Constitutional Amendment

Chokes local tax authority. Requires:

- Requires voter approval for taxes applied to territory that is annexed
- Requires sunset date on all new taxes
- General tax ballot label must say “for general government use”
- Repeals *Upland* exception for initiative special taxes
- Local tax advisory measures are prohibited (the Measure A/B approach).
Draconian, Impractical Ballot Initiative — November 2024

Initiative #21-0042A1: Limits Ability of Voters and State and Local Governments to Raise Revenues for Government Services. Initiative Constitutional Amendment

Restricts local fee authority

- Fees by limiting limited “actual cost” of providing the product or service for which the fee is charged. “Actual cost” is defined as the “minimum amount necessary.”
- Fees - including for use of government property - must be “reasonable to the payor”
- Repeals fee for “special benefit” exception to Prop 26 “tax” definition
- Fees must be adopted by legislative body by ordinance, not staff or a commission
- Changes legal standard from “preponderance of the evidence” to “clear and convincing evidence” to prove a fee or charge is not a tax and does not exceed “actual cost.”
Draconian, Impractical Ballot Initiative – November 2024

Initiative #21-0042A1: Limits Ability of Voters and State and Local Governments to Raise Revenues for Government Services. Initiative Constitutional Amendment

Also ...

- Fines require “adjudicatory process”
- No VMT tax or fee as condition of development or occupancy
- Retroactive window: taxes, fees approved after Jan 1, 2022 will sunset in Dec 2025 if not readopted in compliance with the initiative
  - At least $2 billion of taxes approved in 2022-2024 must be re-adopted in 2025
    - New ballot language, new sunsets, new voter thresholds
  - $ Billions of fees must be readopted to comply in 2025
For taxable sales in unincorporated areas, the local 1% rate goes to the county.

- **City** 1%
- **County TDA** 0.25%
- **Proposition 172** 0.50%
- **County Realignment** 1.5625%
- **State General Fund** 3.9375%

**Total base rate** 7.25%

* For taxable sales in unincorporated areas, the local 1% rate goes to the county.
South Dakota v. Wayfair (SCOTUS 2018): States can require Sellers with significant business within a state to collect/remit taxes, despite not having physical presence in the state.

- Large uptick of Use Tax (Sales Tax) from out-of-state purchase beginning in spring 2019
- Also uptick in Transactions & Use Tax (add-on sales tax) including from instate transactions

- Pandemic hit certain sectors hard (e.g. restaurants, hospitality)
- Pandemic accelerated growth in online retail
Over the Counter Sale

Buyer Receives at ...

Seller’s Place of Business

Retail Store

City A

BrBurns Sales Tax

Tr.Use* Tax

* "Transactions and Use Tax" AKA "Add-On Sales Tax"
Remote (Online) Sale
Seller with *In-State* Presence

Seller’s Place of Business

City A

Warehouse

Sales Office

Product Delivered

Buyer Receives at ...

City B

Residence or Business

BrBurns Sales Tax

Tr.Use* Tax

* “Transactions and Use Tax” AKA “Add-On Sales Tax”
Remote (Online) Sale
Seller with *In-State* Presence

Seller’s Place of Business

Sales Office
Warehouse

City A

Product Delivered

Buyer Receives at ...

Residence or Business

City B

Issues
- Concentration of BB revenues
- Revenue kickback agreements

Good News
- AB147/Wayfair improving TrUT collections

* "Transactions and Use Tax”
AKA “Add-On Sales Tax”

BrBurns Sales Tax
Tr.Use* Tax
Remote (Online) Sale

Seller with **Out-of-State** Presence

- **Seller’s Place of Business**
  - Sales Office
  - Warehouse

- **Out of State**

- **City B**
- **Residence or Business**

- **Buyer Receives at ...**

- **City C**
- **City D**
- **City E**

- **Countywide pool**

- **County**

- **Product Delivered**

- **Out of State**

- **Tr.Use* Tax**
- **BrBurns Use Tax**
Game Over for New Cities and Annexations?

Pernicious Effects of the VLF-Property Tax Swap of 2004
The VLF-Property Tax Swap of 2004

State General Fund

VLF Backfill

Cities & Counties

Property Tax in Lieu of VLF

Schools

$4.4 b*

* in FY2004-05
Vehicle License Fee $ Allocation
Prior to 2004

Existing City

$ VLF (based on population)

Annexation

$ VLF Based on population

CaliforniaCityFinance.com
Vehicle License Fee $ Allocation
with Property Tax–VLF Swap of 2004

Existing City

Property Tax in lieu of VLF

No Property Tax in lieu of VLF

Annexation

$ VLF
Vehicle License Fee $ Allocation

AB1602 (Laird) 2006

- Property Tax in lieu of VLF
- Special VLF: $50/per resident in annexed area

Existing City

Annexation
Vehicle License Fee $ Allocation

SB89 (2011) Eliminated All City VLF
(Diverted to state law enforcement grants)
The Lack of VLF Replacement Makes Many Annexations Fiscally Unviable

Denied Property-Tax-in-Lieu-of-VLF that all other areas of city get
Vehicle License Fee $ Allocation

AB213 (Reyes)

Property Tax in lieu of VLF

Annexation

Existing City
YOU NEED THIS

An essential resource for anyone involved in local government finance in California.

Up-to-date information on local fees, taxes, charges and intergovernmental revenue for local governments including laws, court decisions, state tax rates and allocation formulas.

Michael Coleman
coleman@muniwest.com
CaliforniaCityFinance.com
The California Local Government Finance Almanac