

**REPORT OF THE  
CHIEF LEGISLATIVE ANALYST**

DATE: May 19, 2023

TO: Honorable Members of the Rules, Elections, and Intergovernmental Relations  
Committee

FROM: Sharon M. Tso   
Chief Legislative Analyst

Assignment No: 23-02-0087  
Council File: 23-0002-S27

SUBJECT: Taxpayer Protection and Government Accountability Act

CLA RECOMMENDATION: Adopt Resolution (Krekorian – Blumenfield, Harris-Dawson, Hutt, Raman, Soto-Martinez) to include in the City’s 2023-2024 State Legislative Program OPPOSITION to the “Taxpayer and Government Accountability Act,” which would amend the State Constitution to impose restrictions on the ways in which state and local governments can levy taxes, fees, and other charges.

SUMMARY

The Resolution (Krekorian – Blumenfield, Harris-Dawson, Hutt, Raman, Soto-Martinez) notes that the California Business Roundtable filed the "Taxpayer Protection and Government Accountability Act" to strengthen requirements for the imposition of taxes and certain charges, which is eligible to appear on the November 2024 ballot. The Resolution notes that the measure would amend the California State Constitution to broaden the definition of a tax, introduce new requirements to increase taxes, and require reenactment for recently passed local tax measures. The Resolution notes that passage of the Taxpayer Protection and Government Accountability Act would nullify Measure ULA, known as the United to House LA measure, which was approved by the City's voters in November 2022 and is expected to generate up to \$1.1 billion for affordable housing and programs to address the homelessness crisis.

The Resolution recommends opposition to the Taxpayer Protection and Government Accountability Act.

BACKGROUND

The measure would require that new or increased taxes or fees be approved by voters or the State Legislature, and be restricted to defined uses and collected for a set period of time. The provisions of the initiative would apply to any tax or exempt charge adopted after January 1, 2022. The measure would broaden the definition of tax to include any levy, charge, or exaction imposed by local law, with a few specified exceptions.

If passed, the Taxpayer Protection and Government Accountability Act could affect significant revenue sources for the City, such as franchise payments and the recently-passed Homelessness and Housing Solutions Tax. Passage of the measure would likely hinder the City’s ability to implement new fees or increase existing fees.

The measure would require that any new or increased state taxes be passed by two-thirds of both houses of the California State Legislature and approved by a majority of voters. Current law requires that new state taxes are approved either by the two-thirds of both houses of the Legislature or by a simple majority of voters. As an initiated constitutional amendment, the Taxpayer Protection and Government Accountability Act can be approved by a simple majority of voters.

Under the measure, all local taxes proposed by voters or referred by the local government would require approval by two-thirds of voters. Current law provides different requirements to pass local taxes depending on the type of tax. Taxes such as special-purpose district taxes and parcel taxes require two-thirds approval of the electorate, ad valorem property taxes require approval from 55 percent of the electorate, and general taxes require a simple majority approval of the electorate.

Passage of the initiative would threaten recently-approved taxes and fees aimed at addressing some of the largest crises facing Los Angeles, including housing, homelessness, and climate change. The League of California Cities projects that the Taxpayer Protection and Government Accountability Act would place over \$20B of local government fee and charge revenues over 10 years at heightened legal peril statewide, including \$2B of revenues each year from fees and charges adopted after January 1, 2022.

Proposition 26, approved by voters in 2010, broadened the definition of tax to include any levy, charge, or exaction of any kind imposed by a local government except the following: (1) specific benefits; (2) specific services or products; (3) permits and inspections; (4) use, purchase, or rent of local government property; (5) fines or penalties; (6) property development; and (7) property-related user fees. The first three of these exemptions have a requirement that the fees cannot exceed the reasonable costs to the local government for the services.

The Taxpayer Protection and Government Accountability Act provides that any levy, charge, or exaction imposed by local law is either a tax or an exempt charge. Exempt charges include the following: (1) specific services or products, provided the charge is reasonable and does not exceed the actual cost of providing the benefit; (2) permits and inspections; (3) reasonable charges to use, purchase, or rent local government property; (4) fines or penalties; (5) property development, without any associated charges related to vehicle miles traveled; (6) property-related user fees, and assessments imposed upon a business in a tourism marketing district, a parking and business improvement area, or a property and business improvement district; and (7) health care services that do not exceed the reasonable costs to the local government of providing the health care service. The Taxpayer Protection and Government Accountability Act introduces new cost requirements to existing exemption categories and removes the exemption for charges related to specific benefits entirely.

The measure would revise the exemption for fees associated with providing specific services or products to the payor by requiring the fee not to exceed the “actual” cost for providing the service or product. Currently, the exemption requires that such fees not exceed the “reasonable” cost for providing the service or product. “Actual cost” is defined in the measure as the minimum amount necessary to reimburse the government for the cost of providing the service or product to the payor where the amount charged is not used by the government for any purpose other than reimbursing the cost. New fees and fee increases are currently substantiated by fee studies, which analyze the

costs of providing the services associated with the fee. But the definition of “actual costs” could introduce an additional administrative burden to demonstrate that the costs are the minimum necessary to reimburse the government for the cost of providing the service or product. Or it could negate the justification for a fee increase in instances where a fee may be a “reasonable” cost for providing a product or service, but is not the minimum cost.

The Taxpayer and Government Accountability Act would impose a reasonableness requirement on charges for entrance to or use of local government property, or the purchase, rental, or lease of local government property. This could plausibly impact the City’s ability to adjust fees associated with cultural, educational, or recreational facilities, such as admission to the Los Angeles Zoo or fees associated with Recreation and Parks land or facilities, including those for sports programs.

Current law requires that the local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor’s burdens on, or benefits received from, the governmental activity. The initiative would replace this with new language requiring that the local government prove by clear and convincing evidence that the amount of an exempt charge is reasonable and that the amount charged does not exceed the actual cost of providing the service or product to the payor. The standard of providing clear and convincing evidence is more rigorous than the preponderance of evidence standard. Currently, any fee other than a property-related usage fee that satisfies the exemption requirements can be used for any purpose, including the General Fund. The measure states that “the use of revenue derived from a [charge] shall be a factor in determining whether the [charge] is a tax or exempt charge,” implying that revenues generated by exempt charges can no longer go to the General Fund.

The Taxpayer Protection and Government Accountability Act would prohibit voters from considering advisory, non-binding measures as to use of tax proceeds on the same ballot. This type of measure, while non-binding, is a democratic tool that provides voters with an opportunity to communicate their tax-spending priorities to the government.

Proposition ULA, which was approved by 57.8 percent of voters in the November 2022 election, will impose the Homelessness and Housing Solutions Tax (HHS Tax) starting in 2023. The HHS Tax is expected to generate between \$600M and \$1.1B in annual revenues to increase permanent supportive and affordable housing stock and to provide resources to tenants at risk of homelessness. The HHS Tax will impose a four percent transfer tax on properties sold or transferred in the City of Los Angeles for more than \$5M, and a 5.5 percent transfer tax on properties sold for or transferred for more than \$10M. It is possible that passage of the Taxpayer Protection and Government Accountability Act would nullify Proposition ULA. Under this scenario Proposition ULA would need to be resubmitted and approved by two-thirds of the electorate.

The Taxpayer Protection and Government Accountability Act could impact additional revenue sources not already discussed in this report. Some examples include permit or inspection related fees; various use related fees, such as recycled water charges to specific payors; or landing fees collected by Los Angeles World Airports. While the exact extent of the impact of the measure is

not immediately knowable, it seems plausible that its passage would impact several revenue sources for the City, introduce significant administrative strain, and hamper future efforts to collect charges for services provided by the City.

Departments Notified

Los Angeles Department of Water and Power

Department of Airports

Harbor Department

City Administrative Officer

City Attorney

Public Works, Bureau of Sanitation

Housing Department



Tristan Noack  
Analyst

SMT:tcjn

Attachment: Resolution

**RESOLUTION**

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, the California Business Roundtable filed the "Taxpayer Protection and Government Accountability Act" to increase requirements for taxes and certain charges, which is eligible to appear on the November 2024 ballot; and

WHEREAS, the measure would amend the State Constitution to stipulate that every levy, charge, or exaction of any kind imposed by state or local law is either a tax or an exempt charge; and

WHEREAS, the definition of a tax would be amended to include certain charges that state and local governments currently classify as fees; and

WHEREAS, the measure would require that any proposed tax increase receive the approval of two-thirds of each house of the Legislature in addition to a vote of the statewide electorate and establish that new local voter-proposed taxes be enacted via a two-thirds vote of the electorate; and

WHEREAS, any tax measures passed after January 1, 2022 but prior to the effective date of this Act would be nullified, unless reenacted within 12 months in compliance with the Act, at an additional cost to taxpayers; and

WHEREAS, this Act would nullify Measure ULA, known as the United to House LA measure, approved by the City's voters in November 2022 and expected to generate up to \$1.1 billion for affordable housing and programs to address the homelessness crisis; and

WHEREAS, a report by the California Legislative Analyst Office finds that this measure could result in decreased revenue for state and local governments; and

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WHEREAS, local governments currently face challenges raising revenue, and the proposed changes would make it more difficult to generate revenue to fund community programs, infrastructure, and other essential services; and

WHEREAS, the City of Los Angeles has taken a position to oppose the "Taxpayer Protection and Government Accountability Act" in its 2021-2022 State Legislative Program and should affirm its opposition in the current legislative year;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2023-2024 State Legislative Program OPPOSITION to the "Taxpayer Protection and Government Accountability Act," which would amend the State Constitution to impose restrictions on the ways in which state and local governments can levy taxes, fees, and other charges.

PRESENTED BY: Paul Krekorian  
PAUL KREKORIAN  
Councilmember, 2nd District

ORIGINAL

SECONDED BY: Bel Bumpus  
Nancy Pauer  
M  
Zach Sult  
HSE