



Council Agenda Report

To: Mayor Uhring and the Honorable Members of the City Council

Prepared by: Alexis Brown, Deputy City Manager

Approved by: Steve McClary, City Manager

Date prepared: April 18, 2024 Meeting date: May 13, 2024

Subject: Initiative 21-0042A1 Taxpayer Protection and Government Accountability Act (OPPOSE)

RECOMMENDED ACTION: Authorize the Mayor to send a letter of opposition regarding Initiative 21-004A1, the California Business Roundtable Initiative (aka Taxpayer Protection and Government Accountability Act).

FISCAL IMPACT: If passed, this measure could repeal Measure MC, passed by the voters in November of 2022 establishing a ½ cent Transaction and Use (sales) Tax. Estimated Impact to the General Fund is a loss of more than \$3,000,000 per year.

STRATEGIC PRIORITY: This item is part of the day-to-day operations identified in the Adopted FY 2023-24 Strategic Priority Project List.

DISCUSSION: According to the California Attorney General, the initiative would limit the ability of local voters and state and local governments to raise revenue measures for government services. It could make it harder to raise revenues for a range of services from emergency services to road maintenance.

The CBRT measure would define all sources of revenue as either taxes or “exempt charges” (fees). Local governing bodies would not be able to delegate fee adjustments to administrative entities.

Currently, fees for services or products must cover the “reasonable” cost of service. The CBRT initiative would amend the law so that these fees could not exceed the “actual cost” of providing the product or service. It defines “actual cost” as the “minimum amount necessary.” This could mean cities would need to choose cheaper, less optimal projects,

goods, and services or subsidize the activity, resulting in race-to-the-bottom service levels and quality.

The measure would also create a new requirement that some fees — including for use of or access to government property — must be “reasonable” to the payor. However, it does not define “reasonable.” At the same time, the measure would allow people to challenge fees by claiming a fee is unreasonable even if it meets the “actual cost” of service. This will result in lawsuits that taxpayers will be forced to fund.

Any taxes and fees adopted after Jan. 1, 2022, that do not comply with the measure’s rules would become void unless reenacted within a year of the effective date of the measure. Voters in an annexed area would need to approve existing taxes and local voters could no longer pass special taxes qualified by initiative with a simple majority. Some major examples of affected fees and charges are emergency response fees, document processing and duplication fees, transit fees, tolls, parking fees, facility use charges, garbage disposal tipping fees, and potentially commercial franchise fees.

In November of 2022, the City of Malibu successfully passed Measure MC establishing a ½ cent Transactions and Use (sales) Tax. The tax generates \$3.0 million to \$4.0 million annually and is used to maintain public safety and emergency services, address homelessness, maintain parks and public areas, and other city services vital to the community. If the CBRT is passed, the ramifications would create a substantial shortfall in the City’s general fund.

ATTACHMENTS:

1. Letter of Opposition
2. State of California Legal Analyst Summary of 21-0042A1
3. Office of Attorney General Title and Summary #21-0042A1



City of Malibu

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May 13, 2024

League of California Cities
c/o Public Affairs Department
1400 K Street, Suite 400
Sacramento, CA 95814

RE: Letter Opposing Initiative 21-0042A1

To Whom It May Concern,

On May 13, 2024, the City of Malibu voted to oppose Initiative #21-0042A1, a November 2024 statewide ballot proposition. The measure is a significant threat to local control and voters' rights that could jeopardize funding for vital services.

This measure creates new constitutional loopholes that allow corporations to pay far less than their fair share for the impacts they have on our communities, which could force residents and taxpayers to pay more to maintain services.

The measure puts billions of dollars currently dedicated to local services at risk, and could force cuts to fire and emergency response, law enforcement, services to support homeless residents, and more.

The measure is also an attack on voters' rights, containing undemocratic provisions that would make it more difficult for local voters to pass measures to fund local services, provisions that retroactively cancel measures recently passed by voters, and provisions that prevent voters from passing advisory measures that provide direction on how they want their local tax dollars spent.

Furthermore, the measure contains intentionally vague and restrictive language that will encourage hundreds of frivolous lawsuits against cities and local governments — costing taxpayers millions and blocking investments, development, and long-term planning.

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You may list the City of Malibu in formal opposition to Initiative #21-0042A1 and include our city as part of the growing coalition of public safety, labor, local government, infrastructure advocates, and other organizations throughout the state opposed to this deceptive proposition.

Thank you for your attention to this matter, and please do not hesitate to reach out if you require further information or assistance.

Sincerely,

Steve Uhring, Mayor
City of Malibu



January 19, 2022

Hon. Rob Bonta
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Bonta:

Pursuant to Elections Code Section 9005, we have reviewed the proposed constitutional Taxpayer Protection and Government Accountability Act initiative (A.G. File No. 21-0042, Amendment #1).

Background

State Government

Taxes and Fees. This year's state budget spends over \$255 billion in state funds. Over 90 percent of the state budget is funded with revenues from taxes. These include, for example, sales taxes paid on goods and income taxes paid on wages and other sources of income. Much of the rest of the state budget is funded by fees and other charges. Examples include: (1) charges relating to regulatory activities; (2) charges for specific government services or products, like fees charged to drivers to improve roads; (3) charges for entering state property, such as a state park; and (4) judicial fines, penalties, and other charges. The State Constitution requires the state to set fees at a reasonable level, generally reflecting the costs of the services or benefits provided. The state uses revenue from taxes and fees to fund a variety of programs and services, including education, health care, transportation, and housing and homelessness services.

Current Requirements to Approve Taxes and Fees. Under the State Constitution, state tax increases require approval by two-thirds of each house of the Legislature or a majority vote of the statewide electorate. The Legislature can reduce taxes with a majority vote of each house, provided the change does not result in an increase in taxes paid by any single taxpayer. In many cases, the Legislature has enacted statutes that delegate its authority to adjust fees and other


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charges to administrative entities, like state departments. In these cases, these charges can be increased or changed by the department within certain limits.

Local Government

Taxes and Fees. The largest local government tax is the property tax, which raises roughly \$75 billion annually. Other local taxes include sales taxes, utility taxes, and hotel taxes. In addition to these taxes, local governments levy a variety of fees and other charges. Examples include parking meter fees, building permit fees, regulatory fees, and judicial fines and penalties. In order to be considered a fee, the charge cannot exceed the reasonable costs to the local government of providing the associated product or service. Local governments use revenues from taxes and fees to fund a variety of services, like fire and police, public works, and parks.

Current Requirements to Approve Taxes and Fees. State law requires increases in local taxes to receive approval of the local governing body—for example, a city council or county board of supervisors—as well as approval of voters in that local jurisdiction. Most proposed taxes require a two-thirds vote of the local governing board before being presented to the voters. Special taxes (those used for a specific purpose) require a two-thirds vote of the electorate while other types of taxes require a majority vote of the electorate. The majority-vote general taxes can be used for any purpose. Recent case law suggests that citizen initiative special taxes may be approved by majority vote, rather than a two-thirds vote. Currently, local governing bodies have the ability to delegate their authority to adjust fees and other charges to administrative entities, like city departments. In these cases, these charges can be increased or changed by the department within certain limits.

Proposal

This measure amends the State Constitution to change the rules for how the state and local governments can impose taxes, fees, and other charges.

State and Local Government Taxes

Expands Definition of Tax. The measure amends the State Constitution to expand the definition of taxes to include some charges that state and local governments currently treat as fees and other charges. For example, certain charges imposed for a benefit or privilege granted to a payer but not granted to those not charged would no longer be considered fees. As a result, the measure could increase the number of revenue proposals subject to the higher state and local vote requirements for taxes discussed below.

Requires Voter Approval for State Taxes. The measure increases the vote requirements for increasing state taxes. Specifically, the measure requires that legislatively proposed tax increases receive approval by two-thirds of each house *and* a majority vote of the statewide electorate. Voters would still be able to increase taxes by majority vote of the electorate without legislative action, however. Any state tax approved between January 1, 2022 and the effective date of this measure would be nullified unless it fulfills the requirements of the measure.

Requirements for Approving Local Taxes. Whether sought by the local governing body or the electorate, the measure establishes the same approval requirements for increasing local

special taxes. Any local tax approved between January 1, 2022 and the effective date of this measure would be nullified unless it fulfills the requirements of the measure.

Allowable Uses and Duration of State and Local Tax Revenues Must Be Specified. The measure requires state and local tax measures to identify the type and amount (or rate) of the tax and the duration of the tax. State and local government general tax measures must state that the revenue can be used for general purposes.

State and Local Government Fees

Requires the Legislature and Local Government Bodies to Impose State and Local Fees. Fees would have to be imposed by a majority vote of both houses of the Legislature or local governing bodies. The measure would restrict the ability of state and local governments to delegate fee changes to administrative entities. The extent of these restrictions would depend on future court decisions. Any fee approved between January 1, 2022 and the effective date of this measure would be nullified unless it fulfills the requirements of the measure.

Some New State and Local Fees Could Not Exceed Actual Costs. For some categories of fees, if the Legislature or a local governing body wished to impose a new fee or make changes to an existing fee, the measure generally would require that the charge be both reasonable and reflect the actual costs to the state or local government of providing the service. The measure also specifies that actual cost should not exceed “the minimum amount necessary.” In many cases, existing fees already reflect the government’s actual costs. In other cases, some fees would have to more closely approximate the payer’s actual costs in order to remain fees. If a fee payer challenged the charge, the state or local government would need to provide clear and convincing evidence that the fee meets this threshold. State and local governments also would bear the burden of providing clear and convincing evidence that the levy is a fee—which is not subject to a vote by the electorate—and not a tax under the new definition.

Fiscal Effects

Lower State Tax and Fee Revenue. By expanding the definition of a tax, increasing the vote requirements for approving taxes, and restricting administrative changes to fees, the measure makes it harder for the Legislature to increase nearly all types of state revenues. The extent to which revenues would be lower under the measure would depend on various factors, most notably future decisions made by the Legislature and voters. For example, requirements for legislative approval of fee increases currently set administratively could result in lower fee revenues, depending on future votes of the Legislature. That lower revenue could be particularly notable for some state programs largely funded by fees. Due to the uncertainty of these factors, we cannot estimate the amount of reduced state revenue, but it could be substantial.

Lower Local Government Tax and Fee Revenue. Compared to the state, local governments generally face greater restrictions to raising revenue. By expanding the definition of taxes and restricting administrative changes to fees, the measure would make it somewhat harder for local governments to raise revenue. Consequently, future local tax and fee revenue could be lower than they would be otherwise. The extent to which revenues would be lower is unknown, but

fees could be more impacted. The actual impact on local government revenue would depend on various factors, including future decisions by the courts, local governing bodies, and voters.

Possible Increased State and Local Administrative Costs to Change Some Fee Levels. In some cases, state and local departments would need to develop methods for setting fees to reflect actual costs if the Legislature or local governing bodies wanted to change those fees in the future. Estimating actual costs by program and fee source could involve some added workload for those state and local departments, which likely would be supported by fee revenue. The extent of these administrative costs would depend on (1) whether the state and local governments determine a fee increase is needed in order to maintain their current level of programs and services funded through fee revenue and (2) future court decisions.

Summary of Fiscal Effects. We estimate that this measure would have the following major fiscal effects:

- Lower annual state and local revenues, potentially substantially lower, depending on future actions of the Legislature, local governing bodies, voters, and the courts.

Sincerely,

for Gabriel Petek
Legislative Analyst

for Keely Martin Bosler
Director of Finance

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

**LIMITS ABILITY OF VOTERS AND STATE AND LOCAL GOVERNMENTS TO
RAISE REVENUES FOR GOVERNMENT SERVICES. INITIATIVE**

CONSTITUTIONAL AMENDMENT. For new or increased state taxes currently enacted by two-thirds vote of Legislature, also requires statewide election and majority voter approval. Limits voters' ability to pass voter-proposed local special taxes by raising vote requirement to two-thirds. Eliminates voters' ability to advise how to spend revenues from proposed general tax on same ballot as the proposed tax. Expands definition of "taxes" to include certain regulatory fees, broadening application of tax approval requirements. Requires Legislature or local governing body set certain other fees. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: **Lower annual state and local revenues, potentially substantially lower, depending on future actions of the Legislature, local governing bodies, voters, and the courts.** (21-0042A1.)