

CITY OF SACRAMENTO



DEPARTMENT OF LAW  
812 TENTH STREET SACRAMENTO, CA 95814  
SUITE 201 TELEPHONE (916) 449-5346

JAMES P. JACKSON  
City Attorney  
THEODORE H. KOBAY, JR.  
Assistant City Attorney  
LELIAND J. SAVAGE  
SAMUEL L. JACKSON  
WILLIAM P. CARNAZZO  
DIANE B. BALTER  
RICHARD F. ANTOINE  
Deputy City Attorneys

February 21, 1985

Sacramento City Council  
Sacramento, California 95814

Attention: Law and Legislation Committee

Re: AB 320 (Moore), Utility User Taxes

Honorable Members in Session:

In the attached response, the Department of Finance has recommended opposing AB 320. In doing so, the Department assumed that the bill would be applicable to charter cities like Sacramento. This appears to be the legislative intent. If such is the case, two issues remain:

First, is the bill legally applicable to charter cities? We don't believe so. Existing case law holds that taxation such as this is a municipal affair over which charter cities retain control vis-a-vis the Legislature. Nonetheless, we believe it would not be prudent to rely solely on the municipal affairs doctrine. Instead, the best course for legislative advocacy purposes is to treat the bill as if it would apply to Sacramento.

The second issue is the bill's applicability to existing taxes. It is not clear whether it would prohibit the collection of more than a 5% tax and whether it would mandate that existing tax ordinances provide exemptions for low-income and elderly persons. Again, the safest course here is to treat the bill as if it would apply to existing taxes and determine the City's response accordingly.

Respectfully submitted,

*Theodore H. Kobay, Jr.*  
THEODORE H. KOBAY, JR.  
Assistant City Attorney

THK/jmv  
Attachment

# BILL REFERRAL

DATE: 2/20/85

COMMITTEE ACTION \_\_\_\_\_

TO: MIKE MEDEMA, FINANCE

DATE \_\_\_\_\_

FROM: THEODORE H. KOBAY, JR., Legislative Representative

REPLY NO LATER THAN: ASAP

A.B. 320 S.B. \_\_\_\_\_ Relating to UTILITY USER TAXES

STATUS:

Please review the attached measure to determine its effect upon the City of Sacramento and complete the following questions as appropriate. During your analysis of this measure, if questions arise, please feel free to contact me at 5346. This questionnaire should be returned to me for presentation to the Council Committee on Law and Legislation. PLEASE LEAVE THE BILL ATTACHED TO THIS FORM.

PLEASE TYPE YOUR RESPONSE

1. Briefly describe the provisions of the bill. (Attach additional sheets if necessary.)

This bill would prohibit the imposition by a county or city of a local utility user's tax or any similar excise tax at a rate in excess of 5% of the charges imposed on each user within the county or city. This bill would require an exemption from the imposition of these taxes for low-income and elderly residential customers.

2. Should this measure be: (please circle desired position)

Supported

Opposed

Support if Amended

Placed on Watch List

Other (Explain)

3. Please explain your reasons for the above determination, including how this measure affects your Department and the fiscal impact of this measure to the City. (Your analysis will be used in communicating with the Governor and the Legislature, so please make your comments in a format that can be used in a letter to those officials.) (attach additional sheets if necessary)

See attached.

4. Specify the City's legislative policy guideline(s) applicable to this measure (if any).

Unknown.

5. If this measure could be amended to either improve its favorable aspects or to minimize its adverse aspects, what amendments would you propose? In the event the State of California would honor its constitutional obligations pursuant to Section 5 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, the impact would be mitigated. However, the loss of local control would remain a sufficient cause to continue to oppose the bill.

6. List known support or opposition to this measure by groups with which you are familiar and include addresses and phone numbers, if known. League of California Cities position:

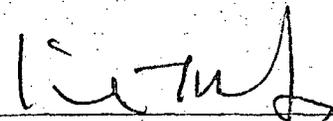
It is likely the public and private utility companies would oppose this measure due to the exemption provisions. According to prior communications from the companies, the exemption provisions would result in increased program administration costs that might be deducted from the local government's revenues.

7. Does this bill involve a State-mandated local program? If so, does the bill contain an S.B. 90 waiver, or an appropriation for allocation and disbursement to local agencies pursuant to Revenue and Taxation Code Section 2231?

Yes. See comments #5.

8. Using a rating scale of 1 to 10 (with 10 as the most important) how important do you think this bill is to the City of Sacramento? 10

FORM COMPLETED BY



DATE: 2-20-85

Michael L. Medema, Revenue Officer

**ASSEMBLY BILL**

**No. 320**

**Introduced by Assembly Member Moore**

**January 17, 1985**

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An act to add Part 23 (commencing with Section 45001) to Division 2 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 320, as introduced, Moore. Utility user taxes.

Existing state law places no restriction upon the imposition by any county or city of a local utility user's tax or any similar excise tax.

This bill would prohibit the imposition by a county or city of a local utility user's tax or any similar excise tax at a rate in excess of 5% of the charges imposed on each user within the county or city. This bill would require an exemption from the imposition of these taxes for low-income and elderly residential customers.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

This bill would provide that no appropriation is made by this act for the purpose of making reimbursement pursuant to the constitutional mandate or Section 2231 or 2234, but would recognize that local agencies and school districts may pursue their other available remedies to seek reimbursement for these costs.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. Part 23 (commencing with Section  
2 45001) is added to Division 2 of the Revenue and Taxation  
3 Code, to read:

4  
5 PART 23. LOCAL UTILITY USERS TAXES  
6

7 45001. No county or city may impose a local utility  
8 user's tax or any other excise tax on the use of any utility  
9 furnished within the county or city by any public or  
10 private entity at a rate which exceeds 5 percent of the  
11 charges imposed on each user of the utility.

12 45002. Any county or city which imposes a tax of the  
13 type specified in Section 45001 shall provide for an  
14 exemption from that tax for low-income and elderly  
15 residential utility customers.

16 SEC. 2. Notwithstanding Section 6 of Article XIII B of  
17 the California Constitution and Section 2231 or 2234 of  
18 the Revenue and Taxation Code, no appropriation is  
19 made by this act for the purpose of making  
20 reimbursement pursuant to these sections. It is  
21 recognized, however, that a local agency or school  
22 district may pursue any remedies to obtain  
23 reimbursement available to it under Chapter 3  
24 (commencing with Section 2201) of Part 4 of Division 1  
25 of that code.

Attachment to bill referral questionnaire re: UTILITY USER TAXES

3. This bill should be opposed due to the following reasons:

- a. The City would experience a general fund revenue loss in FY 1985/86 in the amount of \$9,706,222.
- b. The City would lose its ability to adjust the utility user tax rate to balance revenues and expenditures. This is one of the last major revenue categories available for local adjustment.
- c. The City would lose its ability to determine the criteria for exemption from the tax.