

AMENDED IN ASSEMBLY AUGUST 11, 2016

AMENDED IN ASSEMBLY AUGUST 1, 2016

AMENDED IN ASSEMBLY JUNE 13, 2016

SENATE BILL

No. 1298

Introduced by Senator Hertzberg

February 19, 2016

An act to amend Section 53750 of the Government Code, relating to local government finance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1298, as amended, Hertzberg. Local government: fees and charges.

Articles XIII C and XIII D of the California Constitution generally require that assessments, fees, and charges be submitted to property owners for approval or rejection after the provision of written notice and the holding of a public hearing. Existing law, the Proposition 218 Omnibus Implementation Act, prescribes specific procedures and parameters for local jurisdictions to comply with Articles XIII C and XIII D of the California Constitution and defines terms for these purposes.

This bill would define the terms ~~“proportional cost of the service attributable to the parcel”~~ and ~~“sewer service”~~ term *“sewer”* for these purposes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The ongoing, historic drought has made clear that California
4 must invest in a 21st century water management system capable
5 of effectively meeting the economic, social, and environmental
6 needs of the state.

7 (b) Sufficient and reliable funding to pay for local water projects
8 is necessary to improve the state's water infrastructure.

9 (c) ~~Proposition 218, 218 was approved by the voters in 1996,~~
10 ~~was meant to improve transparency and accountability of local~~
11 ~~government fees. 1996.~~ Some court interpretations of the law have
12 constrained important tools that local governments need to manage
13 water supplies, address water pollution and provide stormwater
14 management. *storm water and drainage runoff.*

15 (d) ~~Stormwater is a key source of local water supply, Storm~~
16 ~~waters are carried off in storm sewers,~~ and careful management
17 is necessary to reduce pollution. But a court decision has ~~required~~
18 ~~stormwater and flood control programs to meet a higher standard~~
19 ~~than other water-related services to raise capital, excluded storm~~
20 ~~water from those provisions of Proposition 218 that apply to~~
21 ~~property-related fees for sewer and water,~~ preventing many
22 important projects from being built.

23 (e) ~~This act is intended to provide guidance to local agencies~~
24 ~~and courts on the implementation of Articles XIII C and XIII D of~~
25 ~~the California Constitution and shall not be construed to amend~~
26 ~~those articles.~~

27 (e) *The Court of Appeal in Howard Jarvis Taxpayers Ass'n v.*
28 *City of Salinas (2002) 98 Cal.App.4th 1351, concluded that the*
29 *term "sewer," as used in Proposition 218, is "ambiguous" but*
30 *rejected, and refused to use, the statutory definition of the term*
31 *"sewer system" which was part of the then-existing law as Section*
32 *230.5 of the Public Utilities Code.*

33 (f) *The Legislature reaffirms and reiterates that the definition*
34 *found in Section 230.5 of the Public Utilities Code is the definition*
35 *of "sewer" or "sewer service" that should be used in the*
36 *Proposition 218 Omnibus Implementation Act.*

37 SEC. 2. Section 53750 of the Government Code is amended
38 to read:

1 53750. For purposes of Article XIII C and Article XIII D of
2 the California Constitution and this article:

3 (a) “Agency” means any local government as defined in
4 subdivision (b) of Section 1 of Article XIII C of the California
5 Constitution.

6 (b) “Assessment” means any levy or charge by an agency upon
7 real property that is based upon the special benefit conferred upon
8 the real property by a public improvement or service, that is
9 imposed to pay the capital cost of the public improvement, the
10 maintenance and operation expenses of the public improvement,
11 or the cost of the service being provided. “Assessment” includes,
12 but is not limited to, “special assessment,” “benefit assessment,”
13 “maintenance assessment,” and “special assessment tax.”

14 (c) “District” means an area that is determined by an agency to
15 contain all of the parcels that will receive a special benefit from a
16 proposed public improvement or service.

17 (d) “Drainage system” means any system of public
18 improvements that is intended to provide for erosion control, for
19 landslide abatement, or for other types of water drainage.

20 (e) “Extended,” when applied to an existing tax or fee or charge,
21 means a decision by an agency to extend the stated effective period
22 for the tax or fee or charge, including, but not limited to,
23 amendment or removal of a sunset provision or expiration date.

24 (f) “Flood control” means any system of public improvements
25 that is intended to protect property from overflow by water.

26 (g) “Identified parcel” means a parcel of real property that an
27 agency has identified as having a special benefit conferred upon
28 it and upon which a proposed assessment is to be imposed, or a
29 parcel of real property upon which a proposed property-related
30 fee or charge is proposed to be imposed.

31 (h) (1) “Increased,” when applied to a tax, assessment, or
32 property-related fee or charge, means a decision by an agency that
33 does either of the following:

34 (A) Increases any applicable rate used to calculate the tax,
35 assessment, fee, or charge.

36 (B) Revises the methodology by which the tax, assessment, fee,
37 or charge is calculated, if that revision results in an increased
38 amount being levied on any person or parcel.

39 (2) A tax, fee, or charge is not deemed to be “increased” by an
40 agency action that does either or both of the following:

1 (A) Adjusts the amount of a tax, fee, or charge in accordance
2 with a schedule of adjustments, including a clearly defined formula
3 for inflation adjustment that was adopted by the agency prior to
4 November 6, 1996.

5 (B) Implements or collects a previously approved tax, fee, or
6 charge, so long as the rate is not increased beyond the level
7 previously approved by the agency, and the methodology
8 previously approved by the agency is not revised so as to result in
9 an increase in the amount being levied on any person or parcel.

10 (3) A tax, assessment, fee, or charge is not deemed to be
11 “increased” in the case in which the actual payments from a person
12 or property are higher than would have resulted when the agency
13 approved the tax, assessment, fee, or charge, if those higher
14 payments are attributable to events other than an increased rate or
15 revised methodology, such as a change in the density, intensity,
16 or nature of the use of land.

17 (i) “Notice by mail” means any notice required by Article XIII C
18 or XIII D of the California Constitution that is accomplished
19 through a mailing, postage prepaid, deposited in the United States
20 Postal Service and is deemed given when so deposited. Notice by
21 mail may be included in any other mailing to the record owner
22 that otherwise complies with Article XIII C or XIII D of the
23 California Constitution and this article, including, but not limited
24 to, the mailing of a bill for the collection of an assessment or a
25 property-related fee or charge.

26 ~~(j) “Proportional cost of the service attributable to the parcel,”~~
27 ~~when applied to a fee or charge for water or sewer service, means~~
28 ~~the share of the total cost of providing water or sewer service to~~
29 ~~water or sewer users within the service area reasonably attributable~~
30 ~~to the parcel. The total cost of providing water or sewer service~~
31 ~~includes all costs of acquiring water and water rights, costs of~~
32 ~~collecting, conveying, treating, and managing water and~~
33 ~~wastewater, and costs of satisfying all regulatory requirements~~
34 ~~lawfully imposed on water and sewer service providers.~~

35 ~~(k)~~

36 (j) “Record owner” means the owner of a parcel whose name
37 and address appears on the last equalized secured property tax
38 assessment roll, or in the case of any public entity, the State of
39 California, or the United States, means the representative of that
40 public entity at the address of that entity known to the agency.

1 ~~(l) “Sewer service”~~

2 (k) “Sewer” means services *and systems* provided by all real
3 estate, fixtures, and personal property owned, controlled, operated,
4 or managed in connection with or to facilitate sewage collection,
5 treatment, or disposition for sanitary or drainage purposes,
6 including lateral and connecting sewers, interceptors, trunk and
7 outfall lines, sanitary sewage treatment or disposal plants or works,
8 drains, conduits, outlets for surface or storm waters, and any and
9 all other works, property, or structures necessary or convenient
10 for the collection or disposal of sewage, industrial waste, or surface
11 or storm waters. “Sewer system” shall not include a sewer system
12 that merely collects sewage on the property of a single owner.

13 ~~(m)~~

14 (l) “Registered professional engineer” means an engineer
15 registered pursuant to the Professional Engineers Act (Chapter 7
16 (commencing with Section 6700) of Division 3 of the Business
17 and Professions Code).

18 ~~(n)~~

19 (m) “Vector control” means any system of public improvements
20 or services that is intended to provide for the surveillance,
21 prevention, abatement, and control of vectors as defined in
22 subdivision (k) of Section 2002 of the Health and Safety Code and
23 a pest as defined in Section 5006 of the Food and Agricultural
24 Code.

25 ~~(o)~~

26 (n) “Water” means any system of public improvements intended
27 to provide for the production, storage, supply, treatment, or
28 distribution of water from any source.

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