MWD
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

March 31, 1993

To: Board of Directors (Executive Committee--Action) (Special Committee on Legislation--Action)

From: General Manager

Subject: Opposition to AB 1262 (Quackenbush--Santa Clara County) and SB 695 (Leonard, Kopp, Lewis, and Watson)

Report

Assembly Member Quackenbush has introduced AB 1262, entitled the "Homeowners' Relief Act of 1993", to substantially limit the imposition of new and existing fees, charges and assessments upon real property. An identical bill has been introduced in the Senate as SB 695 by State Senators Leonard (Upland), Kopp (San Francisco), Lewis (Orange) and Watson (Los Angeles).

This bill would prohibit the imposition of any taxes, assessments, fees or other charges on real property except for (i) property taxes authorized under Articles XIII and XIIIA of the California Constitution, (ii) benefit assessments and (iii) fees for sewer, water and trash collection service.

Imposition of assessments or any increase in existing assessments would require the favorable vote of a majority of property owners voting on the proposition, if the assessment is of direct benefit, and two-thirds of the property owners if the benefit is deemed to be indirect. This election requirement would be in addition to notice, public hearing and other requirements similar to those under existing law, except that a protest at the hearing by the majority of property owners would require abandonment of the assessment proceedings. (The bill is unclear whether this is the majority of owners of property subject to the assessment or the majority attending at the hearing.) Assessments dedicated to the payment of bonded indebtedness would not be subject to the election requirement or the possibility of prohibition by majority protest at the hearing.

Assessments on any parcel would be limited to the amount directly related to the proportionate benefit from the improvements financed with the proceeds of the assessment. Total assessments would be limited to capital costs and operation and maintenance expenses for such improvements "for the year", plus reserves not to exceed five percent.

Under this bill, no fee may be charged as an incident of property ownership except for water, sewer and refuse collection service. Fees for these services may be charged only after notice and hearing and the affirmative vote of a majority of the property owners voting on the proposition. Total fees are limited to the cost of the service provided from proceeds of the fee, and fees imposed on each parcel may not exceed the parcel's proportionate share of such cost. In any action challenging whether the benefit or service is proportional to the amount of the assessment or fee, the burden will be on the agency imposing the charge to prove proportionality.

Fees and other charges imposed as a condition to property development are not intended to be affected by this bill.

Staff believes that Metropolitan should oppose this proposal because it substitutes ambiguous and cumbersome procedures for an existing, proven process already mandated under California law.

Board Committee Assignments

This letter is referred for action to:

The Executive Committee because of its jurisdiction to study, advise and make recommendations with regard to legislation affecting the District, pursuant to Administrative Code Section 2417, subdivision (a); and

The Special Committee on Legislation because of its jurisdiction to review and make recommendations based upon presentations of the General Manager regarding proposals for state legislation and amendments thereto, pursuant to Administrative Code Section 2581, subdivision (a).

Recommendation

EXECUTIVE COMMITTEE AND SPECIAL COMMITTEE ON LEGISLATION FOR ACTION.

It is recommended that the Board oppose AB 1262 and SB 695.

for General Manager

SBB:gm
bdltr\AB1262.opp

ASSEMBLY BILL No. 1262

Introduced by Assembly Member Quackenbush
(Principal Senate coauthor: Senator Leonard)

March 3, 1993

An act to add Part 4 (commencing with Section 55900) to Division 2 of Title 5 of the Government Code, relating to local finance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1262, as introduced, Quackenbush. Local government finance: fees and assessments: procedures and requirements.

Existing law does not provide a comprehensive set of rules and procedures to generally govern the proposal and imposition of local assessments or fees.

This bill would enact the Homeowners' Relief Act of 1993 to generally impose various requirements and limitations with respect to the imposition of new and existing local assessments and fees. By imposing new duties on local governments with respect to the imposition of existing assessments, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide

cost does not exceed $1,000,000, shall be made from the State Mandates Claims Fund.

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 4 (commencing with Section
2 55900) is added to Division 2 of Title 5 of the Government
3 Code, to read:
4
5 PART 4. HOMEOWNERS' RELIEF ACT OF 1993
6
7 55900. This part shall be known and may be cited as
8 the "Homeowners' Relief Act of 1993."
9 55901. (a) The Legislature hereby finds and declares
10 that Proposition 13 was approved by the voters to limit
11 property taxes and to ensure that new taxes are
12 submitted to the local electorate for approval. However,
13 since Proposition 13 was enacted, homeowners have been
14 increasingly subjected to increased property-related
15 "fees," "charges," and "assessments" that have unduly
16 burdened California taxpayers, disproportionately
17 impacted homeowners on fixed incomes, and reduced
18 housing affordability.
19 (b) The Legislature also finds and declares that most
20 of these new property-related "fees," "charges," and
21 "assessments" have been imposed without a vote of the
22 affected property owners. It is in the public interest to
23 ensure that the citizens in California have the right to
24 vote on impositions of, and increases in, assessments and
25 fees.
26 55902. (a) Notwithstanding any other provision of
27 law and subject to subdivision (b), this part shall apply to
28 all assessments and fees imposed pursuant to all
29 assessment or fee authorizations, including, but not
30 limited to, the Improvement Act of 1911 (Division 7
31 (commencing with Section 5000) of the Streets and
32 Highways Code), the Municipal Improvement Act of
33 1913 (Division 12 (commencing with Section 10000) of

1 the Streets and Highways Code), and the Landscaping
2 and Lighting Act of 1972 (Part 2 (commencing with
3 Section 22500) of Division 15 of the Streets and Highways
4 Code). The requirements of this part shall control in the
5 event of any conflict between those requirements and
6 the requirements of a specific assessment or fee
7 authorization.
8 (b) Nothing in this part is intended to affect existing
9 laws relating to the imposition of fees or other charges as
10 a condition for property development.
11 55903. As used in this part:
12 (a) "Agency" means any county, city and county, or
13 city, including any charter county or charter city, or any
14 district or special district. For purposes of this
15 subdivision, "special district" includes any governmental
16 district regardless of whether the district is empowered
17 to levy a property tax.
18 (b) "Assessment" means any levy or charge upon real
19 property by an agency for a direct or indirect benefit
20 conferred upon that real property, whether that levy or
21 charge is a new assessment or an annual assessment first
22 imposed in a previous year. "Assessment" includes a
23 special assessment, a benefit assessment, and a special
24 assessment tax, but does not include an ad valorem tax or
25 parcel tax.
26 (c) "Assessment for direct benefit" means only those
27 assessments imposed to finance capital costs for a
28 sidewalk, sewer, water, or a flood control or drainage
29 system.
30 (d) "Assessments for indirect benefit" means all
31 assessments, other than assessments for direct benefit,
32 imposed to finance capital costs, or operating and
33 maintenance expenses, for public improvements.
34 (e) "Capital costs" means the costs of the initial
35 acquisition, installation, or construction of a public
36 improvement by an agency.
37 (f) "Fee" means any levy or charge, other than a tax
38 or an assessment, imposed by an agency upon a person as
39 an incident of property ownership for a public service.
40 (g) "Flood control or drainage system" means a

system of bypasses, levees, canals, check dams, sumps, channels, drains, basins, culverts, reservoirs, or other works necessary for the control of storm and other wastewater that, if uncontrolled, would threaten to flood a parcel.

(h) "Operation and maintenance expenses" means the cost of rent, repair, replacement, rehabilitation, fuel, power, electrical current, care, or supervision necessary to properly operate and maintain a public improvement.

(i) "Parcel" means an identifiable, contiguous piece of real property that is subject to the imposition of an existing or proposed assessment or fee.

(j) "Person" includes any person, firm, association, organization, partnership, business trust, corporation, or company.

(k) "Public improvement" means any tangible asset used for a public service, a public purpose, or a public purpose incidental to a public service.

(*l*) "Public service" means the provision of any service to members of the public by an agency.

(m) "Sewer" includes the lateral and collecting sewers for the handling, gathering, and disposal of sewage or industrial waste discharge from a parcel.

(n) "Sidewalk" means that portion of a street, immediately adjacent to a parcel, other than the roadway, set apart by curbs, barriers, markings, or other delineations for pedestrian travel.

(o) "Water" includes water works, conduits, reservoirs, storage sites, water sheds, machinery, wells, pumps, dams, storage tanks, hydrants, meters, other appliances, and their appurtenances.

55904. Notwithstanding any other provision of law, no tax, assessment, fee, or any other charge by any agency shall be assessed on property or on any person as an incident of property ownership except:

(a) A property tax authorized pursuant to Article XIII and Article XIII A of the California Constitution.

(b) Assessments for direct benefit as provided in this part.

(c) Assessments for indirect benefit as provided in this

1 part.
2 (d) Fees for sewer, water, and refuse collection
3 services.
4 55905. (a) Procedures applicable to the imposition of
5 an assessment include, but are not be limited to, the
6 following:
7 (1) An agency shall identify all parcels that will be
8 benefited by and be subject to an assessment. The
9 proportionate benefit derived by each identified parcel
10 shall be determined in relationship to the entirety of
11 either the capital cost or the operation and maintenance
12 expense of the public improvement.
13 (2) All assessments shall be supported by a detailed
14 engineer's report prepared by a registered professional
15 engineer certified by the State of California. A separate
16 report shall be prepared for each fiscal year and shall
17 contain plans and specifications for the improvements, an
18 estimate of the costs of the improvements, and a diagram
19 for the assessment district delineating each parcel to be
20 assessed.
21 (3) The amount of the assessment for each identified
22 parcel shall be calculated and the record owner of each
23 parcel shall be given written notice by not less than
24 first-class mail of the assessment, the reason therefor, the
25 amount of that assessment, and the basis upon which that
26 amount was calculated, together with the date, time, and
27 location of a public hearing on the proposed assessment.
28 (4) The agency shall conduct a public hearing upon
29 the assessment not less than 45 days after mailing the
30 notice of the assessment to the record owners of each
31 identified parcel. At the public hearing, the agency shall
32 consider all protests against the assessment. If written
33 protests against the assessment are presented at the
34 hearing by a majority of the record owners of the
35 identified parcels, the agency shall not impose the
36 assessment.
37 (5) Following the public hearing on the assessment, if
38 the imposition of that assessment is not precluded by
39 written protests and the agency has made a finding that
40 the assessment is authorized and should be imposed, the

agency shall provide written notice of that finding to the record owners of each identified parcel. If an election is required to approve the assessment, the agency shall schedule an election on the assessment not less than 90 days after providing the record owners of each identified parcel with written notice of the agency's finding.

(b) (1) If an agency has made a finding that an assessment is authorized and should be imposed and the assessment is an assessment for a direct benefit, the agency shall not impose the assessment until it is submitted to a vote of the electorate of the district for which it is proposed and the imposition is approved by a majority of the property owners who would be liable to pay the assessment and who voted on the imposition.

(2) If an agency has made a finding that an assessment is authorized and should be imposed and the assessment is an assessment for an indirect benefit, the agency shall not impose the assessment until it is submitted to a vote of the electorate of the district for which it is proposed and the imposition is approved by two-thirds of the property owners who would be liable to pay the assessment and who voted on the imposition.

(c) (1) An assessment, the revenues of which are dedicated solely to the payment of either principal or interest on bonded indebtedness, shall not be subject to either of the following:

(A) The election requirements of subdivision (b).

(B) The prohibition against imposition contained in paragraph (4) of subdivision (a).

(2) For purposes of paragraph (1), "bonded indebtedness" includes other forms of indebtedness, including, but not limited to, certificates of participation.

(3) Any assessment that has previously received the requisite voter approval described in subdivision (b) shall be subject to the voter approval requirements of that subdivision only if the assessment, as applied to any parcel, has been increased beyond the amount of the assessment previously approved by the voters.

55906. An assessment shall not be imposed by any agency unless that assessment meets all of the following

requirements:

(a) The amount of the assessment upon any parcel is directly related to the proportionate benefit derived by the parcel. An increase in the value of property shall by itself be insufficient for the imposition of either a direct or indirect assessment.

(b) The total annual amount of the assessment shall not exceed the revenue required to finance the capital costs or the operating and maintenance expenses, or both, for the year except that a reserve fund not exceeding 5 percent of the most recent year's total budget of the assessment district may be maintained.

(c) Revenues derived from any assessment shall not be used for any purpose other than that for which the assessment was imposed.

55907. An agency shall, by statute, ordinance, or resolution, adopt procedures to be followed by that agency in imposing any fee as defined in this part, including, but not limited to, the following:

(a) The parcels upon which, or the persons upon whom, a proposed fee is to be imposed shall be identified. The amount of the proposed fee with respect to each parcel or person shall be calculated. The agency shall provide written notice of the proposed fee to the record owner of each subject parcel or each person stating the amount of the fee proposed to the imposed upon each, the basis upon which that amount was calculated, the reason for the fee, together with the date, time, and location of a public hearing on the proposed fee.

(b) The agency shall conduct a public hearing upon the proposed fee not less than 45 days after mailing the notice of the proposed fee to the record owners of each parcel or to each person subject to the proposed fee. At the public hearing, the agency shall consider all protests against the proposed fee.

(c) After the conduct of a public hearing on the proposed fee, the agency shall, if it has found that the proposed fee should be imposed, schedule an election on the fee to be held not less then 90 days after the date of that finding.

(d) An agency shall not impose a fee unless and until the fee is approved by a majority vote of the record owners of the parcels or the persons subject to the fee who have voted on the imposition.

55908. A fee shall not be imposed by any agency unless that fee meets all of the following conditions:

(a) The anticipated revenues to be derived from the fee do not exceed the anticipated amount required to provide the public service, or to finance the capital costs or operating and maintenance expenses of the public improvement.

(b) The use of revenues derived from the fee for any purpose other than the purpose for which the fee was imposed are prohibited.

(c) The amount of the fee imposed upon any parcel or person shall not exceed the parcel's or person's anticipated proportional share of the cost of the public service, the public improvement, or the operating and maintenance expenses of a public improvement.

55909. (a) Any person, or his or her authorized representative, liable to pay any assessment or fee, may protest either whether he or she or his or her parcel or parcels should be subject to the assessment or fee, or the propriety of the amount of that assessment or fee. Any protest shall be made in writing, or both in writing and in person. Because protest hearings are legislative and not adjudicatory in nature, a protest shall be deemed sufficient if it states the grounds upon which it is made, and it is not necessary that the protest set forth all supporting evidentiary material that may be used later in an action challenging the assessment or fee.

(b) Any affected person may bring an action challenging the legality of an assessment or fee, or the amount thereof. In any action where an affected person contends that the property or person being charged derives no benefit or service or an inadequate benefit or service proportional to the amount of the assessment or fee, the burden shall be on the agency to demonstrate that the amount of the assessment or fee is proportionate to the benefit or service received by that property or

1 person.
2 (c) If any action brought pursuant to subdivision (b)
3 is resolved in favor of a property owner, the court shall
4 award the prevailing property owner his or her court
5 costs and reasonable attorney fees.
6 55911. (a) Nothing in this part shall be construed to
7 limit or abrogate any existing constitutional or statutory
8 provision precluding the imposition by an agency of any
9 tax, fee, assessment, charge, or other levy in the absence
10 of approval by a two-thirds vote of the voters of that
11 agency.
12 (b) Nothing in this part shall be construed to authorize
13 the imposition of property taxes, assessments, or fees
14 under the guise of "excise" taxes, or taxes or assessments
15 on the privilege of owning property or the receipt of
16 public services, or to provide any new taxing, assessment,
17 or fee authority to any agency.
18 (c) This part shall be liberally construed in order to
19 further its purposes of providing limited charges and
20 assessments on real property in California and its
21 purposes of providing property owners with the right to
22 vote on any property-related assessment or fee.
23 (d) If any provision of this act or the application
24 thereof to any person or circumstances is held invalid,
25 that invalidity shall not affect other provisions or
26 applications of the act which can be given effect without
27 the invalid provision or application, and to this end the
28 provisions of this act are severable.
29 SEC. 2. Notwithstanding Section 17610 of the
30 Government Code, if the Commission on State Mandates
31 determines that this act contains costs mandated by the
32 state, reimbursement to local agencies and school
33 districts for those costs shall be made pursuant to Part 7
34 (commencing with Section 17500) of Division 4 of Title
35 2 of the Government Code. If the statewide cost of the
36 claim for reimbursement does not exceed one million
37 dollars ($1,000,000), reimbursement shall be made from
38 the State Mandates Claims Fund. Notwithstanding
39 Section 17580 of the Government Code, unless otherwise
40 specified in this act, the provisions of this act shall become

1 operative on the same date that the act takes effect
2 pursuant to the California Constitution.

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SENATE BILL No. 695

Introduced by Senators Leonard, Kopp, Lewis, and Watson
(Coauthors: Assembly Members Andal, Ferguson, Haynes, Honeycutt, Horcher, Nolan, Quackenbush, and Richter)

March 3, 1993

An act to add Part 4 (commencing with Section 55900) to Division 2 of Title 5 of the Government Code, relating to local finance.

LEGISLATIVE COUNSEL'S DIGEST

SB 695, as introduced, Leonard. Local government finance: fees and assessments: procedures and requirements.

Existing law does not provide a comprehensive set of rules and procedures to generally govern the proposal and imposition of local assessments or fees.

This bill would enact the Homeowners' Relief Act of 1993 to generally impose various requirements and limitations with respect to the imposition of new and existing local assessments and fees. By imposing new duties on local governments with respect to the imposition of existing assessments, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed $1,000,000, shall be made from the State

Mandates Claims Fund.

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 4 (commencing with Section
2 55900) is added to Division 2 of Title 5 of the Government
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7 55900. This part shall be known and may be cited as
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11 property taxes and to ensure that new taxes are
12 submitted to the local electorate for approval. However,
13 since Proposition 13 was enacted, homeowners have been
14 increasingly subjected to increased property-related
15 "fees," "charges," and "assessments" that have unduly
16 burdened California taxpayers, disproportionately
17 impacted homeowners on fixed incomes, and reduced
18 housing affordability.
19 (b) The Legislature also finds and declares that most
20 of these new property-related "fees," "charges," and
21 "assessments" have been imposed without a vote of the
22 affected property owners. It is in the public interest to
23 ensure that the citizens in California have the right to
24 vote on impositions of, and increases in, assessments and
25 fees.
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27 law and subject to subdivision (b), this part shall apply to
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30 limited to, the Improvement Act of 1911 (Division 7
31 (commencing with Section 5000) of the Streets and
32 Highways Code), the Municipal Improvement Act of
33 1913 (Division 12 (commencing with Section 10000) of
34 the Streets and Highways Code), and the Landscaping

1 and Lighting Act of 1972 (Part 2 (commencing with
2 Section 22500) of Division 15 of the Streets and Highways
3 Code). The requirements of this part shall control in the
4 event of any conflict between those requirements and
5 the requirements of a specific assessment or fee
6 authorization.
7 (b) Nothing in this part is intended to affect existing
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9 a condition for property development.
10 55903. As used in this part:
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19 conferred upon that real property, whether that levy or
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21 imposed in a previous year. "Assessment" includes a
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23 assessment tax, but does not include an ad valorem tax or
24 parcel tax.
25 (c) "Assessment for direct benefit" means only those
26 assessments imposed to finance capital costs for a
27 sidewalk, sewer, water, or a flood control or drainage
28 system.
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30 assessments, other than assessments for direct benefit,
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32 maintenance expenses, for public improvements.
33 (e) "Capital costs" means the costs of the initial
34 acquisition, installation, or construction of a public
35 improvement by an agency.
36 (f) "Fee" means any levy or charge, other than a tax
37 or an assessment, imposed by an agency upon a person as
38 an incident of property ownership for a public service.
39 (g) "Flood control or drainage system" means a
40 system of bypasses, levees, canals, check dams, sumps,

channels, drains, basins, culverts, reservoirs, or other works necessary for the control of storm and other wastewater that, if uncontrolled, would threaten to flood a parcel.

(h) "Operation and maintenance expenses" means the cost of rent, repair, replacement, rehabilitation, fuel, power, electrical current, care, or supervision necessary to properly operate and maintain a public improvement.

(i) "Parcel" means an identifiable, contiguous piece of real property that is subject to the imposition of an existing or proposed assessment or fee.

(j) "Person" includes any person, firm, association, organization, partnership, business trust, corporation, or company.

(k) "Public improvement" means any tangible asset used for a public service, a public purpose, or a public purpose incidental to a public service.

(*l*) "Public service" means the provision of any service to members of the public by an agency.

(m) "Sewer" includes the lateral and collecting sewers for the handling, gathering, and disposal of sewage or industrial waste discharge from a parcel.

(n) "Sidewalk" means that portion of a street, immediately adjacent to a parcel, other than the roadway, set apart by curbs, barriers, markings, or other delineations for pedestrian travel.

(o) "Water" includes water works, conduits, reservoirs, storage sites, water sheds, machinery, wells, pumps, dams, storage tanks, hydrants, meters, other appliances, and their appurtenances.

55904. Notwithstanding any other provision of law, no tax, assessment, fee, or any other charge by any agency shall be assessed on property or on any person as an incident of property ownership except:

(a) A property tax authorized pursuant to Article XIII and Article XIII A of the California Constitution.

(b) Assessments for direct benefit as provided in this part.

(c) Assessments for indirect benefit as provided in this part.

(d) Fees for sewer, water, and refuse collection services.

55905. (a) Procedures applicable to the imposition of an assessment include, but are not be limited to, the following:

(1) An agency shall identify all parcels that will be benefited by and be subject to an assessment. The proportionate benefit derived by each identified parcel shall be determined in relationship to the entirety of either the capital cost or the operation and maintenance expense of the public improvement.

(2) All assessments shall be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California. A separate report shall be prepared for each fiscal year and shall contain plans and specifications for the improvements, an estimate of the costs of the improvements, and a diagram for the assessment district delineating each parcel to be assessed.

(3) The amount of the assessment for each identified parcel shall be calculated and the record owner of each parcel shall be given written notice by not less than first-class mail of the assessment, the reason therefor, the amount of that assessment, and the basis upon which that amount was calculated, together with the date, time, and location of a public hearing on the proposed assessment.

(4) The agency shall conduct a public hearing upon the assessment not less than 45 days after mailing the notice of the assessment to the record owners of each identified parcel. At the public hearing, the agency shall consider all protests against the assessment. If written protests against the assessment are presented at the hearing by a majority of the record owners of the identified parcels, the agency shall not impose the assessment.

(5) Following the public hearing on the assessment, if the imposition of that assessment is not precluded by written protests and the agency has made a finding that the assessment is authorized and should be imposed, the agency shall provide written notice of that finding to the

record owners of each identified parcel. If an election is required to approve the assessment, the agency shall schedule an election on the assessment not less than 90 days after providing the record owners of each identified parcel with written notice of the agency's finding.

(b) (1) If an agency has made a finding that an assessment is authorized and should be imposed and the assessment is an assessment for a direct benefit, the agency shall not impose the assessment until it is submitted to a vote of the electorate of the district for which it is proposed and the imposition is approved by a majority of the property owners who would be liable to pay the assessment and who voted on the imposition.

(2) If an agency has made a finding that an assessment is authorized and should be imposed and the assessment is an assessment for an indirect benefit, the agency shall not impose the assessment until it is submitted to a vote of the electorate of the district for which it is proposed and the imposition is approved by two-thirds of the property owners who would be liable to pay the assessment and who voted on the imposition.

(c) (1) An assessment, the revenues of which are dedicated solely to the payment of either principal or interest on bonded indebtedness, shall not be subject to either of the following:

(A) The election requirements of subdivision (b).

(B) The prohibition against imposition contained in paragraph (4) of subdivision (a).

(2) For purposes of paragraph (1), "bonded indebtedness" includes other forms of indebtedness, including, but not limited to, certificates of participation.

(3) Any assessment that has previously received the requisite voter approval described in subdivision (b) shall be subject to the voter approval requirements of that subdivision only if the assessment, as applied to any parcel, has been increased beyond the amount of the assessment previously approved by the voters.

55906. An assessment shall not be imposed by any agency unless that assessment meets all of the following requirements:

(a) The amount of the assessment upon any parcel is directly related to the proportionate benefit derived by the parcel. An increase in the value of property shall by itself be insufficient for the imposition of either a direct or indirect assessment.

(b) The total annual amount of the assessment shall not exceed the revenue required to finance the capital costs or the operating and maintenance expenses, or both, for the year except that a reserve fund not exceeding 5 percent of the most recent year's total budget of the assessment district may be maintained.

(c) Revenues derived from any assessment shall not be used for any purpose other than that for which the assessment was imposed.

55907. An agency shall, by statute, ordinance, or resolution, adopt procedures to be followed by that agency in imposing any fee as defined in this part, including, but not limited to, the following:

(a) The parcels upon which, or the persons upon whom, a proposed fee is to be imposed shall be identified. The amount of the proposed fee with respect to each parcel or person shall be calculated. The agency shall provide written notice of the proposed fee to the record owner of each subject parcel or each person stating the amount of the fee proposed to the imposed upon each, the basis upon which that amount was calculated, the reason for the fee, together with the date, time, and location of a public hearing on the proposed fee.

(b) The agency shall conduct a public hearing upon the proposed fee not less than 45 days after mailing the notice of the proposed fee to the record owners of each parcel or to each person subject to the proposed fee. At the public hearing, the agency shall consider all protests against the proposed fee.

(c) After the conduct of a public hearing on the proposed fee, the agency shall, if it has found that the proposed fee should be imposed, schedule an election on the fee to be held not less then 90 days after the date of that finding.

(d) An agency shall not impose a fee unless and until

the fee is approved by a majority vote of the record owners of the parcels or the persons subject to the fee who have voted on the imposition.

55908. A fee shall not be imposed by any agency unless that fee meets all of the following conditions:

(a) The anticipated revenues to be derived from the fee do not exceed the anticipated amount required to provide the public service, or to finance the capital costs or operating and maintenance expenses of the public improvement.

(b) The use of revenues derived from the fee for any purpose other than the purpose for which the fee was imposed are prohibited.

(c) The amount of the fee imposed upon any parcel or person shall not exceed the parcel's or person's anticipated proportional share of the cost of the public service, the public improvement, or the operating and maintenance expenses of a public improvement.

55909. (a) Any person, or his or her authorized representative, liable to pay any assessment or fee, may protest either whether he or she or his or her parcel or parcels should be subject to the assessment or fee, or the propriety of the amount of that assessment or fee. Any protest shall be made in writing, or both in writing and in person. Because protest hearings are legislative and not adjudicatory in nature, a protest shall be deemed sufficient if it states the grounds upon which it is made, and it is not necessary that the protest set forth all supporting evidentiary material that may be used later in an action challenging the assessment or fee.

(b) Any affected person may bring an action challenging the legality of an assessment or fee, or the amount thereof. In any action where an affected person contends that the property or person being charged derives no benefit or service or an inadequate benefit or service proportional to the amount of the assessment or fee, the burden shall be on the agency to demonstrate that the amount of the assessment or fee is proportionate to the benefit or service received by that property or person.

(c) If any action brought pursuant to subdivision (b) is resolved in favor of a property owner, the court shall award the prevailing property owner his or her court costs and reasonable attorney fees.

55911. (a) Nothing in this part shall be construed to limit or abrogate any existing constitutional or statutory provision precluding the imposition by an agency of any tax, fee, assessment, charge, or other levy in the absence of approval by a two-thirds vote of the voters of that agency.

(b) Nothing in this part shall be construed to authorize the imposition of property taxes, assessments, or fees under the guise of "excise" taxes, or taxes or assessments on the privilege of owning property or the receipt of public services, or to provide any new taxing, assessment, or fee authority to any agency.

(c) This part shall be liberally construed in order to further its purposes of providing limited charges and assessments on real property in California and its purposes of providing property owners with the right to vote on any property-related assessment or fee.

(d) If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect

1 pursuant to the California Constitution.

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