

● **Board of Directors**
Communications and Legislation Committee

April 11, 2000 Board Meeting

8-7

Subject

Recommend support of Assembly Bill 1982 (Gallegos - San Gabriel), legislation to permit increases of standby charges if approved as part of a schedule of adjustments.

Description

Three Valleys Municipal Water District has requested Metropolitan's support for Assembly Bill 1982, clarifying legislation to equalize treatment of an "assessment" to that accorded to a "tax or fee or charge" under the provisions of Proposition 218.

Senate Bill 919 (Chapter 38, 1997) was enacted to clarify and interpret certain provisions of Proposition 218 and it allowed for the scheduled adjustment of a tax, fee, or charge if a schedule of adjustments was in place prior to November 6, 1996. SB 919 did not extend the same treatment to "assessments" such as a standby charge.

Assembly Bill 1982 would treat assessments, such as standby charges, the same as a tax, fee, or charge, thereby allowing a prior schedule of adjustments adopted by a public agency to be implemented. In addition, the legislation would amend certain provisions of the Government Code to exempt increases in assessments based upon an assessment formula from mailed notice required by the Uniform Standby Charge Procedure Act.

Policy

New Policy.

Board Options/Fiscal Impacts

Option #1

Authorize Metropolitan to support Assembly Bill 1982.

Fiscal Impact: None

Option #2

Do not authorize support of legislation.

Fiscal Impact: No change from current circumstance.

Staff Recommendation

Option #1.


General Manager

3/29/2000
Date

Attachment 1 – AB 1982

Attachment 2 – Three Valleys MWD letter

The Following 5 Pages are

Attachment 1

To Board Letter 8-7

ASSEMBLY BILL

No. 1982

Introduced by Assembly Member Gallegos

February 18, 2000

An act to amend Sections 53750 and 54984.7 of the Government Code, relating to local agency assessments.

LEGISLATIVE COUNSEL'S DIGEST

AB 1982, as introduced, Gallegos. Local agency assessments.

(1) Existing law imposes certain notice, protest, and hearing requirements when a local government agency proposes to impose a new or increased assessment, as defined, upon real property with specified exceptions. Existing law defines the word "increased" as applied to a tax, assessment, or property-related fee or charge, and provides that a tax, fee, or charge is not deemed to be "increased" by an agency action that adjusts the amount of a tax, fee, or charge in accordance with a schedule of adjustments adopted prior to November 6, 1996, or that implements or collects a previously approved tax, fee, or charge, as long as the rate is not increased beyond the level previously approved and the methodology previously approved is not revised so as to result in an increased amount for that levy.

This bill would add assessment to these 2 categories of actions by an agency deemed not to increase a levy.

(2) Existing law establishes a uniform procedure available to any local agency authorized to provide water, sewer, or water and sewer service and authorized to fix, levy, or collect

any standby or availability charge or assessment for provision of that service. Under that law, if the governing body has followed the procedure, it may continue the same charge in subsequent years, by published resolution, and dispense with the mailed notice requirement.

This bill would authorize the governing body to increase the amount of an assessment in this manner if the increase is based upon an assessment formula, or is within a range of assessments, previously noticed and adopted.

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. Section 53750 of the Government Code
2 is amended to read:
3 53750. For purposes of Article XIII C and Article
4 XIII D of the California Constitution and this article:
5 (a) "Agency" means any local government as defined
6 in subdivision (b) of Section 1 of Article XIII C of the
7 California Constitution.
8 (b) "Assessment" means any levy or charge by an
9 agency upon real property that is based upon the special
10 benefit conferred upon the real property by a public
11 improvement or service, that is imposed to pay the capital
12 cost of the public improvement, the maintenance and
13 operation expenses of the public improvement, or the
14 cost of the service being provided. "Assessment"
15 includes, but is not limited to, "special assessment,"
16 "benefit assessment," "maintenance assessment," and
17 "special assessment tax."
18 (c) "District" means an area that is determined by an
19 agency to contain all of the parcels that will receive a
20 special benefit from a proposed public improvement or
21 service.
22 (d) "Drainage system" means any system of public
23 improvements that is intended to provide for erosion
24 control, landslide abatement, or for other types of water
25 drainage.



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

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

9 (g) “Identified parcel” means a parcel of real property
10 that an agency has identified as having a special benefit
11 conferred upon it and upon which a proposed assessment
12 is to be imposed, or a parcel of real property upon which
13 a proposed property-related fee or charge is proposed to
14 be imposed.

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

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

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

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

27 (A) Adjusts the amount of a tax~~or~~, *assessment*, fee, or
28 charge in accordance with a schedule of adjustments,
29 including a clearly defined formula for inflation
30 adjustment that was adopted by the agency prior to
31 November 6, 1996.

32 (B) Implements or collects a previously approved tax,
33 ~~or~~ *assessment*, fee, or charge, so long as the rate is not
34 increased beyond the level previously approved by the
35 agency, and the methodology previously approved by the
36 agency is not revised so as to result in an increase in the
37 amount being levied on any person or parcel.

38 (3) A tax, assessment, fee or charge is not deemed to
39 be “increased” in the case in which the actual payments
40 from a person or property are higher than would have



1 resulted when the agency approved the tax, assessment,
2 or fee or charge, if those higher payments are attributable
3 to events other than an increased rate or revised
4 methodology, such as a change in the density, intensity,
5 or nature of the use of land.

6 (i) “Notice by mail” means any notice required by
7 Article XIII C or XIII D of the California Constitution
8 that is accomplished through a mailing, postage prepaid,
9 deposited in the United States Postal Service and is
10 deemed given when so deposited. Notice by mail may be
11 included in any other mailing to the record owner that
12 otherwise complies with Article XIII C or XIII D of the
13 California Constitution and this article, including, but not
14 limited to, the mailing of a bill for the collection of an
15 assessment or a property-related fee or charge.

16 (j) “Record owner” means the owner of a parcel
17 whose name and address appears on the last equalized
18 secured property tax assessment roll, or in the case of any
19 public entity, the State of California, or the United States,
20 means the representative of that public entity at the
21 address of that entity known to the agency.

22 (k) “Registered professional engineer” means an
23 engineer registered pursuant to the Professional
24 Engineers Act (Chapter 7 (commencing with Section
25 6700) of Division 3 of the Business and Professions Code).

26 (l) “Vector control” means any system of public
27 improvements or services that is intended to provide for
28 the surveillance and control of vectors as defined in
29 subdivision (f) of Section 2200 of the Health and Safety
30 Code and a pest as defined in Division 4 (commencing
31 with Section 5001) and Division 5 (commencing with
32 Section 9101) of the Food and Agricultural Code.

33 (m) “Water” means any system of public
34 improvements intended to provide for the production,
35 storage, supply, treatment, or distribution of water.

36 SEC. 2. Section 54984.7 of the Government Code is
37 amended to read:

38 54984.7. (a) If the procedures set forth in this chapter
39 have been followed in a given year, the governing body
40 may, by resolution, continue the charge *or assessment* in



1 successive years at the same rate and in the same manner,
2 but dispensing with the requirement for mailed notice.
3 The local agency shall cause notice of the intent to adopt
4 the resolution to be published pursuant to Section 6066,
5 prior to the date set for adoption, and shall hear any and
6 all objections at the time and place set forth in the notice.
7 The governing body shall, at the time and place specified,
8 conduct the hearing and consider all objections to the
9 assessment, if any. The governing body may, thereafter,
10 adopt, revise, reduce, or modify the assessment or charge,
11 but may not increase the charge, or may overrule any and
12 all objections. The determination of the governing body
13 shall be final. ~~This section~~

14 *(b) Subdivision (a) shall not apply if the amount of the*
15 *assessment is increased, or if the governing body makes*
16 *any change in the areas subject to the assessment,*
17 *compared to the prior year's assessment.*
18 *Notwithstanding other provisions of this section, the*
19 *governing body may increase the amount of an*
20 *assessment in accordance with subdivision (a) if the*
21 *increase is based upon an assessment formula, or is within*
22 *a range of assessments, previously noticed by the local*
23 *agency and adopted by the governing body.*



Background on Three Valleys Municipal Water District Standby Charge Problem

During the meeting of the legal affairs committee held at the Spring ACWA Conference on May 5, 1999, general counsel for Three Valleys Municipal Water District ("TVMWD"), Steven M. Kennedy of the law firm of Brunick, Alvarez & Battersby, was asked to give the committee some background on TVMWD's standby charge. Mr. Kennedy responded that on March 10, 1999, the Attorney General's Office issued the above-referenced opinion which held that TVMWD may not readopt its standby charge in future years at the higher annual rates set forth in the engineer's report approved by TVMWD's Board of Directors at the time it adopted its original resolution (prior to the passage of Proposition 218) without subjecting such increases to the majority-protest and voter approval requirements of Proposition 218. 82 Ops.Cal.Atty.Gen. 35.

Mr. Kennedy further indicated to the committee that the Attorney General's opinion turned on the fact that the word "assessment" - which the Attorney General deemed a standby charge to be for purposes of Proposition 218 pursuant to Article XIII D of the California Constitution - was **not** included within the protections of Government Code Section 53750(h)(2) when the language thereof was negotiated with the Howard Jarvis Taxpayers Association ("HJTA") during the development of the clean-up legislation ultimately adopted by the State Legislature as Senate Bill ("SB") 919.

In this regard, Government Code Section 53750(h)(2) provides in pertinent part as follows:

"A tax, fee, or charge is not deemed to be 'increased' by an agency action that does either or both of the following:

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

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

As a result, pursuant to Mr. Kennedy's letter to ACWA dated March 29, 1999, the legal affairs committee was asked whether it would consider initiating and/or supporting a lobbying effort with the State Legislature to enact the following:

- (1) Amend the language of Government Code Section 53750(h)(2) so that "assessments" are specifically included within the application of its provisions; and
- (2) Amend Government Code Section 54984.7 to state that the mailing requirements of the Uniform Standby Charge Procedures Act, Government Code Section 54984 et seq. ("USCPA"), do not apply to increases based upon an assessment formula or range of assessments previously noticed and adopted by a government agency.

The committee members who responded all stated that the ruling did not surprise them since assessments were intentionally omitted from Government Code Section 53750(h)(2) at the demand of HJTA during the SB 919 negotiations. In fact, the legal committee took the time to criticize those agencies that submitted requests for opinions from the Attorney General's office without prior review by the ACWA Legal Affairs Committee, even though:

- (a) TVMWD **did** bring this matter before ACWA prior to the issuance of the Attorney General's opinion and in fact received opinions from certain members of the committee at the Fall Conference that were at odds with the statements made by those same attorneys at the Spring Conference;
- (b) Only one member of the committee submitted a brief in support of TVMWD's position despite the fact that TVMWD formally requested that members of the committee file written comments to the Attorney General's office consistent with the views expressed orally by those attendees at the Fall Conference; and
- (c) The opinion ultimately issued by the Attorney General resulted in the express finding that "[s]tandby charges imposed by a water district constitute 'assessments' within the meaning of article XIII D of the Constitution." 82 Ops.Cal.Atty.Gen. at 38. As a result, the Attorney General's opinion obtained by TVMWD offers persuasive authority in support of the position taken by ACWA in the amicus brief that it filed with the Court of Appeal in Keller v. Chowcilla Water District which challenges the ruling of the Merced County Superior Court that held that standby fees do not qualify for the exemptions for pre-existing assessments under Article XIID of the California Constitution.

Despite the mix of opinions expressed at the legal committee, Mr. Reeb did seem willing, with the concurrence of the Legislative Committee, to seek a beneficial change in Proposition 218 in the possibly more-receptive legislative environment that currently exists in the wake of the recent election results and a Democrat now serving as Governor.

As a result, on May 19, 1999, the Board of Directors of TVMWD voted unanimously to pursue this matter by asking ACWA to immediately initiate lobbying efforts with the State Legislature to amend the language of Government Code Sections 53750(h)(2) and 54984.7 to ensure that an increase in the amount of TVMWD's standby charge pursuant to a schedule adopted prior to the enactment of Proposition 218 would not pierce the exemptions contained therein for pre-existing water-related assessments or subject such increases to the mailed-notice requirements of the USCPA.

Such an outcome would result in a state-wide benefit to all public water agencies served by ACWA since there is no logical basis for allowing pre-existing taxes, fees, and charges that are increased in accordance with a previously-approved schedule of adjustments to retain their original exempt status, but not assessments -- especially in light of the fact that the ballot materials circulated by HJTA prior to the election on Proposition 218 indicated that the purpose of the initiative was to close a "loophole in the law" and make assessments subject to the same rules as taxes, not to create more onerous rules for assessments.

AB 1982 (Gallegos)

- ***This is a cleanup bill with a limited scope.***

Our purpose is NOT to overturn or amend Proposition 218, rather to “clean up” a problem created by SB 919, the bill passed in 1997 to define and interpret some provisions of Prop. 218 after its was enacted by voters.

SB 919 allowed schedule of increases to taxes, fees, and charges – only “assessments” were omitted from that provision of the bill. Our standby charge is considered an assessment under Proposition 218, and we had adopted it with a schedule of necessary increases.

Three Valleys has spent over two years trying to clear up the confusion caused by the bill. An opinion by the Attorney General helped us conclude that a legislative fix is needed.

- ***It's a matter of fairness.***

Our standby charge permits undeveloped land to bear some of the cost of water infrastructure projects – projects of great benefit to that property when it is developed, or threatened by fire. Without the ability to collect increases in revenue from property, current ratepayers have to shoulder the entire burden of infrastructure costs.

Even if one interprets Proposition 218 to define assessments as fundamentally different from taxes, fees, or charges, the Three Valleys case calls for the power to increase according to a schedule under certain conditions. Capital costs the assessment was created to support were scheduled to increase in accordance with bond debt payments, therefore the district should have the power to increase the assessment as scheduled, to keep pace with the actual cost to the district.

- ***Our wholesale water customers are united in support.***

Before adopting the standby charge, Three Valleys conducted open public forums in addition to the regular mailed notice to all property owners. The schedule of (maximum) annual increases was fairly and thoroughly.