

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

April 10, 2007 Board Meeting

8-13

Subject

Express support for AB 1260 (Caballero, D-Salinas) – Local government fees and charges

Description

Proposition 218, approved by the California voters in November 1996, added Articles XIII C and D to the California Constitution, for the purpose of limiting local agency taxes, assessment, fees and charges. Article XIII D established additional procedures and limitations for public agencies imposing fees and charges for a property-related service, such as water, sewer and refuse collection service.

The California Supreme Court opinion issued last July in *Bighorn-Desert View Water Agency v. Verjil* declared that charges to a property owner or resident for water delivery through a pipeline are charges for a property-related service subject to Article XIII D. Among other things, Article XIII D requires agencies imposing new fees and charges or increasing existing fees and charges to: (1) provide mailed notice describing the proposal to the record owners of properties receiving the service for which the fees and charges will be imposed; and (2) give them the opportunity to protest the new or increased charges.

AB 1260 by Assemblywoman Anna Marie Caballero ([Attachment 1](#)) amends the Proposition 218 Omnibus Implementation Act to enable local agencies to send the notices required by Article XIII D to the person who requests or receives the services for which the fee or charge is levied and who is liable for the charges. Currently the Proposition 218 Omnibus Implementation Act requires public agencies seeking to impose or increase fees and charges to send notice to the property owner shown on the tax assessment rolls. But the person who receives the service and pays for it often is not the same as the record owner of the property. Additionally, information on record owners of property may be outdated compared to a utility's customer list, and costly to obtain from the assessment rolls. AB 1260 also clarifies the procedures for prioritizing protests if multiple protests are filed for a single parcel.

In addition, AB 1260 establishes a 120-day statute of limitations for any challenge to adoption of a new fee or charge or any increase in a fee or charge. At present it is unclear whether a one-year or a three-year statute of limitations currently applies to legal actions challenging such fees.

AB 1260 is sponsored by the Association of California Water Agencies and California Special Districts Association.

Policy

Metropolitan Water District Administrative Code Section 2471(a): The Communications and Legislation Committee shall study, advise and make recommendations to the Board with regard to legislation, or amendments thereto, that may affect the District.

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may

have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination and express support for AB 1260.

Fiscal Impact: None

Business Analysis: AB 1260, if approved, will clarify uncertainties in the way Proposition 218 applies to public agencies providing retail water service and facilitate their compliance with its requirements. It has no direct impact on Metropolitan but will decrease administrative burdens and direct costs of Article XIII D compliance to member agencies and subagencies.

Option #2

Take no action.

Fiscal Impact: None

Business Analysis: Retail water agencies will continue to face the difficulties in Proposition 218 compliance that are described in this letter.

Staff Recommendation

Option #1



Linda Waade 3/29/2007
Deputy General Manager, External Affairs Date



Jeffrey Kightlinger 3/29/2007
General Manager Date

Attachment 1 – Assembly Bill No. 1260

BLA #5353

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL**No. 1260****Introduced by Assembly Member Caballero**

February 23, 2007

An act to amend Section 53750 of, and to add Sections 53755 and 53756 to, the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1260, as introduced, Caballero. Local governments: taxes, fees, assessments, and charges: notice.

(1) 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 Article XIII C and Article XIII D of the California Constitution, and defines "record owner" to mean the owner of a parcel whose name and address appears on the last equalized secured property tax assessment roll, or in the case of a public entity, the state or the United States, the representative of that public entity at the address of that entity known to the agency.

This bill would, instead, define "record owner" to mean, for the purposes of a fee or charge subject to the requirements of Section 6 of Article XIII D of the California Constitution, the person or entity who requests or receives the services for which the fee or charge is levied and who is directly liable to the agency for payment of the fee or charge, and for all other purposes, the owner of a parcel whose name and address appears on the last equalized secured property tax assessment roll, or in the case of any public entity, the state, or the United States, record

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owner means the representative of that public entity at the address of that entity known to the agency, as specified.

(2) Existing statutory law provides notice, protest, and hearing procedures for the levying of new or increased assessments by local government agencies pursuant to Articles XIII C and XIII D of the California Constitution.

This bill would authorize any record owner, as specified, to file a protest or protests, as specified, to a fee or charge subject to Section 6 or Article XIII D of the California Constitution.

This bill would also impose a 120-day limit on the commencement of a judicial action or proceeding to attack, review, set aside, void, or annul an ordinance, resolution, or motion adopting a new fee or charge, or increasing an existing fee or charge, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
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 is
2 amended to read:

3 53750. For purposes of Article XIII C and Article XIII D of
4 the California Constitution and this article *the following terms*
5 *have the following meanings:*

6 (a) "Agency" means any local government as defined in
7 subdivision (b) of Section 1 of Article XIII C of the California
8 Constitution.

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

17 (c) "District" means an area that is determined by an agency to
18 contain all of the parcels that will receive a special benefit from a
19 proposed public improvement or service.

20 (d) "Drainage system" means any system of public
21 improvements that is intended to provide for erosion control,
22 landslide abatement, or for other types of water drainage.

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

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

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

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

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

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

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

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

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

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

38 (i) “Notice by mail” means any notice required by Article XIII C
39 or XIII D of the California Constitution that is accomplished
40 through a mailing, postage prepaid, deposited in the United States

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1 Postal Service and is deemed given when so deposited. Notice by
2 mail may be included in any other mailing to the record owner
3 that otherwise complies with Article XIII C or XIII D of the
4 California Constitution and this article, including, but not limited
5 to, the mailing of a bill for the collection of an assessment or a
6 property-related fee or charge.

7 (j) ~~“Record owner” means the owner of a parcel whose name~~
8 ~~and address appears on the last equalized secured property tax~~
9 ~~assessment roll, or in the case of any public entity, the State of~~
10 ~~California, or the United States, means the representative of that~~
11 ~~public entity at the address of that entity known to the agency.~~
12 *either of the following:*

13 *(1) For a fee or charge subject to the requirements of Section*
14 *6 of Article XIII D, other than a fee or charge that is collected by*
15 *an agency in the same manner as the ad valorem property tax, the*
16 *person or entity that requests or receives the services for which*
17 *the fee or charge is levied and that is directly liable to the agency*
18 *for payment of the fee or charge. An agency may rely on its billing*
19 *records to identify the name and address of, and may send notices*
20 *to the record owner as defined in this paragraph, or the owner’s*
21 *representative, shown on the records of the agency.*

22 *(2) For all other purposes, the owner of a parcel whose name*
23 *and address appears on the last equalized secured property tax*
24 *assessment roll. In the case of any public entity, the State of*
25 *California, or the United States, “record owner” means the*
26 *representative of that public entity at the address of that entity*
27 *known to the agency. However, if the agency desires to preserve*
28 *any authority it may have to record or enforce a lien on the parcel*
29 *to which service is provided, then the agency must give notice to*
30 *both the record owner or owner’s representative pursuant to*
31 *paragraph (1) and the owner of record pursuant to this paragraph,*
32 *if they are different. Whenever a record owner is entitled to notice*
33 *under paragraph (1), only that record owner may file a written*
34 *protest.*

35 (k) “Registered professional engineer” means an engineer
36 registered pursuant to the Professional Engineers Act (Chapter 7
37 (commencing with Section 6700) of Division 3 of the Business
38 and Professions Code).

39 (l) “Vector control” means any system of public improvements
40 or services that is intended to provide for the surveillance,

1 prevention, abatement, and control of vectors as defined in
2 subdivision (k) of Section 2002 of the Health and Safety Code and
3 a pest as defined in Section 5006 of the Food and Agricultural
4 Code.

5 (m) "Water" means any system of public improvements intended
6 to provide for the production, storage, supply, treatment, or
7 distribution of water.

8 SEC. 2. Section 53755 is added to the Government Code, to
9 read:

10 53755. (a) For a fee or charge subject to the requirements of
11 Section 6 of Article XIII D of the California Constitution, any
12 record owner as defined in subdivision (j) of Section 53750 may
13 file a protest, but only one protest shall be counted for each parcel
14 if multiple protests are filed for that parcel. However, whenever a
15 record owner, as defined in paragraph (1) of subdivision (j) of
16 Section 53750, is entitled to notice, only the written protest filed
17 by that record owner shall be counted. As used in this section and
18 in subdivision (j) of Section 53750, parcel includes each separate
19 billing address or service connection to which an agency provides
20 service and for which a person or entity is entitled to notice
21 pursuant to paragraph (1) of subdivision (j) of Section 53750.

22 (b) Any agency that bills, collects, and remits a fee or charge
23 on behalf of another agency may provide the notice required by
24 Section 6 of Article XIII D of the California Constitution on behalf
25 of the other agency.

26 SEC. 3. Section 53756 is added to the Government Code, to
27 read:

28 53756. (a) Any judicial action or proceeding to attack, review,
29 set aside, void, or annul an ordinance, resolution, or motion
30 adopting a new fee or charge, or increasing an existing fee or
31 charge, adopted by an agency defined in Section 2 of Article
32 XIII D of the California Constitution, shall be commenced within
33 120 days of the effective date of the ordinance, resolution, or
34 motion.

35 If an ordinance, resolution, or motion provides for an automatic
36 adjustment that increases a fee or charge, any action or proceeding
37 to attack, review, set aside, void, or annul the increase shall be
38 commenced within 120 days of the effective date of any increase.

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- 1 (b) Any action by a local agency or interested person under this
- 2 section shall be brought pursuant to Chapter 9 (commencing with
- 3 Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.
- 4 (c) This section does not apply to any fee or charge for which
- 5 another statute, other than Section 338 of Code of Civil Procedure,
- 6 establishes a specific time and procedure for judicial challenge.

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