

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

August 21, 2007 Board Meeting

8-5

Subject

Express support for SCA 12 (Torlakson, D-Antioch) — Stormwater and Urban Runoff Fees

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 establishes procedures for public agencies imposing property-related fees and charges, including written notice to property owners, a public hearing and majority protest procedures. In addition, any new or increased property-related fees or charges, except charges for water, sewer and refuse collection service, must be approved by either a majority vote of the owners of the properties subject to the fee or charge or two-thirds of the voters residing in the area affected by the fee or charge.

SCA 12 ([Attachment 1](#)) proposes to amend Section 6 of Article XIII D to add stormwater and urban runoff management to the types of services with fees or charges that are exempt from the voter approval requirement. A 2002 Court of Appeal decision (*Howard Jarvis Taxpayers Association v. City of Salinas*) found that charges imposed by the City of Salinas on developed parcels of property to fund stormwater management were property-related fees subject to Article XIII D, but were not exempt from the voter approval requirement as charges for water or sewer service.

This amendment seeks to expressly put fees for stormwater and urban runoff management services in the same category with fees for water, sewer, and trash collection, which must meet the other requirements of Article XIII D but do not need voter approval in order to be imposed or increased. This would facilitate watershed management programs by enabling local jurisdictions to impose fees pursuant to the notice, hearing and protest procedures of Article XIII D, but without the costly and often insurmountable step of obtaining voter approval.

SCA 12 is consistent with Metropolitan's policy principles on watershed management, adopted in 1995 and updated in 2000 ([Attachment 2](#)). These policy principles support watershed management funding methods that promote watershed responsibility and fairly allocate costs. The policy principles state that fees on residential, commercial and industrial users of water for watershed management programs must clearly identify the purpose and use of the fee and that there must be a reasonable relationship between the fee and the benefit to be derived. Article XIII D requires that fees and charges for a property-related service not exceed the amount needed to provide the service, that the amount imposed upon any property not exceed the proportional cost of service attributable to that parcel, and that the revenues be applied solely for the purpose for which the charge was imposed. Watershed management fees that are imposed under Article XIII D would meet these criteria.

SCA 12 is supported by the League of California Cities, the Bay Area Stormwater Management Agencies Association, a number of cities and some environmental organizations, including Heal the Bay, California Coastkeeper Alliance, Baykeeper and Inland Empire Waterkeeper. It is opposed by the California Taxpayers Association and Howard Jarvis Taxpayers Association.

Policy

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 (Metropolitan Water District Administrative Code Section 2471(a)).

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)(2) 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)(2) 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 authorize support for SCA 12.

Fiscal Impact: None

Business Analysis: SCA 12, if approved by the Legislature and adopted by California voters, will enable local agencies to impose stormwater management and urban runoff fees by the same process that applies to retail water, sewer and trash collection fees. This will aid in the equitable allocation of costs for urban runoff management programs and assist with the implementation of watershed management programs.

Option #2

Take no action.

Fiscal Impact: \$0

Business Analysis: Local agencies will continue to face obstacles in funding watershed management programs with charges to benefiting property owners.

Staff Recommendation

Option #1


 Linda Waade
 Deputy General Manager, External Affairs

7/26/2007
 Date


 Jeffrey Nightlinger
 General Manager

8/8/2007
 Date

Attachment 1 – Senate Constitutional Amendment 12

Attachment 2 – Policy Principle on Watershed Management

AMENDED IN SENATE JUNE 18, 2007

Senate Constitutional Amendment

No. 12

Introduced by Senators Torlakson and Yee
(Coauthor: Senator Kuehl)

May 21, 2007

Senate Constitutional Amendment No. 12—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 6 of Article XIII D thereof, relating to local government finance.

LEGISLATIVE COUNSEL'S DIGEST

SCA 12, as amended, Torlakson. Local government: property-related fees.

The California Constitution, with the exception of fees or charges for sewer, water, and refuse collection services, conditions the imposition or increase of a property-related fee or charge upon approval by either a majority vote of the owners of the properties subject to the fee or charge or, at the option of the agency imposing the fee or charge, by a $\frac{2}{3}$ vote of the voters residing in the area affected by the fee or charge.

This measure would additionally exclude fees and charges for stormwater and ~~surface water drainage~~ *urban runoff management* from these approval requirements for the imposition or increase of a property-related fee or charge.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

- 1 *Resolved by the Senate, the Assembly concurring,* That the
- 2 Legislature of the State of California at its 2007–08 Regular
- 3 Session commencing on the fourth day of December 2006,

SCA 12

— 2 —

1 two-thirds of the membership of each house concurring, hereby
2 proposes to the people of the State of California, that the
3 Constitution of the State be amended as follows:

4 That Section 6 of Article XIII D thereof is amended to read:

5 SEC. 6. Property Related Fees and Charges. (a) Procedures
6 for New or Increased Fees and Charges. An agency shall follow
7 the procedures pursuant to this section in imposing or increasing
8 any fee or charge as defined pursuant to this article, including, but
9 not limited to, the following:

10 (1) The parcels upon which a fee or charge is proposed for
11 imposition shall be identified. The amount of the fee or charge
12 proposed to be imposed upon each parcel shall be calculated. The
13 agency shall provide written notice by mail of the proposed fee or
14 charge to the record owner of each identified parcel upon which
15 the fee or charge is proposed for imposition, the amount of the fee
16 or charge proposed to be imposed upon each, the basis upon which
17 the amount of the proposed fee or charge was calculated, the reason
18 for the fee or charge, together with the date, time, and location of
19 a public hearing on the proposed fee or charge.

20 (2) The agency shall conduct a public hearing upon the proposed
21 fee or charge not less than 45 days after mailing the notice of the
22 proposed fee or charge to the record owners of each identified
23 parcel upon which the fee or charge is proposed for imposition.
24 At the public hearing, the agency shall consider all protests against
25 the proposed fee or charge. If written protests against the proposed
26 fee or charge are presented by a majority of owners of the identified
27 parcels, the agency shall not impose the fee or charge.

28 (b) Requirements for Existing, New or Increased Fees and
29 Charges. A fee or charge shall not be extended, imposed, or
30 increased by any agency unless it meets all of the following
31 requirements:

32 (1) Revenues derived from the fee or charge shall not exceed
33 the funds required to provide the property related service.

34 (2) Revenues derived from the fee or charge shall not be used
35 for any purpose other than that for which the fee or charge was
36 imposed.

37 (3) The amount of a fee or charge imposed upon any parcel or
38 person as an incident of property ownership shall not exceed the
39 proportional cost of the service attributable to the parcel.

1 (4) No fee or charge may be imposed for a service unless that
2 service is actually used by, or immediately available to, the owner
3 of the property in question. Fees or charges based on potential or
4 future use of a service are not permitted. Standby charges, whether
5 characterized as charges or assessments, shall be classified as
6 assessments and shall not be imposed without compliance with
7 Section 4.

8 (5) No fee or charge may be imposed for general governmental
9 services including, but not limited to, police, fire, ambulance or
10 library services, where the service is available to the public at large
11 in substantially the same manner as it is to property owners.

12 Reliance by an agency on any parcel map, including, but not
13 limited to, an assessor's parcel map, may be considered a
14 significant factor in determining whether a fee or charge is imposed
15 as an incident of property ownership for purposes of this article.
16 In any legal action contesting the validity of a fee or charge, the
17 burden shall be on the agency to demonstrate compliance with this
18 article.

19 (c) Voter Approval for New or Increased Fees and
20 Charges. Except for fees or charges for sewer, water, stormwater
21 and ~~surface water drainage~~ *urban runoff management*, or refuse
22 collection services, a property-related fee or charge shall not be
23 imposed or increased unless and until that fee or charge is
24 submitted and approved by a majority vote of the property owners
25 of the property subject to the fee or charge or, at the option of the
26 agency, by a two-thirds vote of the electorate residing in the
27 affected area. The election shall be conducted not less than 45 days
28 after the public hearing. An agency may adopt procedures similar
29 to those for increases in assessments in the conduct of elections
30 under this subdivision.

31 (d) Beginning July 1, 1997, all fees or charges shall comply
32 with this section.



The Metropolitan Water District of Southern California

POLICY PRINCIPLE ON WATERSHED MANAGEMENT

Issue: Funding for Watershed Management.

Policy Adopted:

- Support public funding for watershed restoration and management programs that provide broad public benefits, including water quality, water supply reliability and environmental improvements. Public funding mechanisms include voter-approved State General Obligation Bonds and federal and state budget appropriations.
- Public agencies that administer watershed management funding programs and allocate public funds for specific watershed projects should: (1) develop well-defined criteria for the distribution of funds; (2) justify that funding levels represent actual needs; (3) provide oversight for the funding program; and (4) specify monitoring and reporting requirements for watershed project proponents receiving funding.
- Support watershed management funding methods that promote watershed responsibility and fairly allocate costs to those entities responsible for water quality degradation in the watershed.
- Watershed management programs funded by fees on water exporters or on residential, commercial and industrial users of water should be evaluated on a case-by-case basis. Such fees must meet the following criteria: (1) the purpose and use of the fee must be clearly identified; and (2) a determination must be made that there is a reasonable relationship between the fee and the benefit to be derived. These criteria are consistent with Government Code Section 66001 concerning fees for development projects.

Issue: Watershed Management Plans.

Policy Adopted:

- Support legislation that provides for the development of watershed management plans, in both the Southern California region and the Bay-Delta watershed, that are consistent with the following criteria:
- Watershed management plans should address all water resources management objectives for the watershed, including source water quality improvement, groundwater protection, water supply reliability, flood protection and ecosystem restoration objectives.
- To achieve water quality improvement objectives for surface waters and groundwater basins, watershed management plans should address all sources of pollutants within the watershed and consider the relative impact of each source when developing and implementing control measures.
- Watershed management plans should recognize local primacy in basin management and land-use planning, consider local conditions, needs and objectives, and encourage joint cooperation in watershed management activities.
- Watershed planning processes should have a public participation process that includes public drinking water suppliers as a stakeholder and facilitates cooperative working relationships among all watershed stakeholders.
- Watershed management plans should be consistent and coordinated with the authority of the State to manage allocation of water supplies within its jurisdiction.

Issue: Participation in Watershed Planning Processes.

Policy Adopted:

- Support Metropolitan's involvement as a stakeholder in watershed planning and management processes for imported sources of supply (i.e., the Bay-Delta watershed and the multi-state Colorado River watershed), to work in cooperation with other watershed stakeholders, and ensure consideration of drinking water quality and water supply reliability objectives.
- Support Metropolitan's involvement as a stakeholder working cooperatively with the Member Agencies and others on watershed planning efforts for local water supplies and potential local water supplies, to ensure consideration of drinking water quality and water supply reliability objectives.

M.I. 41221 - January 10, 1995; M. I. 43964 - April 11, 2000 (Note: January 1995 policy principles replaced by April 2000 policy principles).