



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

4/11/2017 Board Meeting

8-7

Subject

Adopt CEQA determination and express support for SB 231 (Hertzberg, D-Van Nuys) - Local Government: Fees and Charges

Executive Summary

Proposition 218, passed by the voters in 1996, added Articles XIII C and XIII D to the California Constitution, which provides procedural and substantive requirements for property-related fees and charges, such as fees and charges that fund stormwater management. Under Proposition 218, property-related fees and charges are subject to a majority-protest hearing *and* an election, unless they are fees and charges for water, sewer, or refuse collection services. Fees and charges for those three specific services are subject only to a majority-protest hearing, and not an election. Although stormwater management has often been part of water and sewer services, that fact has not always been clear to courts interpreting the election exemption of Proposition 218.

In 2014, the Legislature passed AB 2403 (Rendon, D-Lakewood) to amend the preexisting definition of “water” in the Proposition 218 Omnibus Implementation Act (Act), clarifying that water for water services may come “from any source.” The clarification provided certainty to local agencies for funding stormwater projects that form part of their retail water services. Now, SB 231 ([Attachment 1](#)) proposes to add the definition for “sewer” services to the Act, which includes stormwater systems. SB 231 explains that the proposed “sewer” definition is the same as the definition already found in Section 230.5 of the California Public Utilities Code.

While Proposition 218 does not apply to Metropolitan’s wholesale water rates, it does apply to the property-related fees and charges of many of our retail member agencies and sub-agencies. The definition would provide some clarification for the funding of stormwater projects by those agencies; is consistent with Metropolitan’s policies and principles; and is consistent with Metropolitan’s Integrated Resources Plan. Accordingly, staff recommends a support position for SB 231.

Details

Proposition 218, approved by the California voters in November 1996, added Articles XIII C and D to the California Constitution establishing procedural requirements and substantive limitations for local special taxes, assessment, and property-related fees and charges. Article XIII D establishes procedures for 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 through an election 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.

Article XIII D does not define any of the services that fall within the exception to the election requirement. The Proposition 218 Omnibus Implementation Act defines “water” service, but does not define “sewer” services. Moreover, although stormwater management is often integrated with water and sewer services, that fact has not always been clear to courts interpreting the election exemption of Proposition 218.

In 2014, the Legislature passed AB 2403 (Rendon) to amend the preexisting definition of “water” in the Act, clarifying that water for water services may come “from any source.” Now, SB 231 would add to the Act the

definition of “sewer” services, which includes stormwater systems. The proposed definition is already found in Section 230.5 of the California Public Utilities Code and reads as follows:

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

Thus, SB 231 would remove some uncertainty in stormwater services funding for those agencies providing retail sewer service and stormwater management.

SB 231 is consistent with Metropolitan’s policy principles on watershed management that were originally adopted in 1995 and subsequently updated in 2000 and 2016. These policy principles support public funding for watershed restoration and management programs that provide broad public benefits, including water quality, water supply reliability, and environmental improvement. Additionally, Metropolitan’s State Legislative Priority and Principle on Regional Water Resource Management, adopted in January 2017, provides Metropolitan will “[s]upport administrative/legislative action to promote the development of recycled water (including indirect and direct potable reuse), stormwater, and desalination projects as water resources, without compromising the operational, financial and water quality, regulatory and customer interests of Metropolitan and other water and wastewater agencies.” Metropolitan has long supported stormwater as part of the region’s water supply resources and did include stormwater capture as a low-cost, low-risk preparatory action within the Foundational Actions in the 2010 Integrated Resources Plan Update, Metropolitan’s evolving, long-term water strategy designed to ensure the region’s reliability into the future. (Other Foundational Actions included recycled water, seawater desalination, and groundwater cleanup.)

Staff recommends support for SB 231 to provide local agencies greater certainty in financing needed stormwater management projects.

Policy

By Minute Item 50611, dated October 11, 2016, the Board adopted the Policy Principle on Watershed Management.

By Minute Items 50703 and 50704, dated January 10, 2017, the Board adopted the State Legislative Priorities and Principles for 2017/18

By Minute Item 48449, dated October 12, 2010, the Board adopted the 2010 Integrated Resources Plan Update

By Minute Item 50358, dated January 12, 2016, the Board adopted the 2015 Integrated Water Resources Plan Update

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves legislative proposals which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (CEQA Section 21065 and Section 15378(b)(1) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not defined as a project under CEQA pursuant to CEQA Section 21065 as well as Section 15378(b)(1) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination that the proposed action is not defined as a project under CEQA, and
Authorize the General Manager to support SB 231 as described in this board letter.

Fiscal Impact: Unknown at this time. With passage of this legislation, local agencies with stormwater collection responsibilities within Metropolitan’s service area may choose to enact new or increased charges to fund stormwater systems. As a landowner with multiple and extensive properties within its service area, Metropolitan may be subject to such enacted stormwater charges as yet unknown.

Business Analysis: Though potentially impacted financially from such new or increased charges that may be enacted by local agencies with the passage of this legislation, Metropolitan supports flexibility in watershed funding for stormwater collection systems. Additionally, if passed, SB 231 would reduce obstacles to local agency funding of stormwater management, including stormwater capture and treatment, potentially resulting in increased local water supplies and increase regional water supply reliability.

Option #2

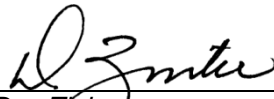
Take no action.

Fiscal Impact: Unknown at this time. Possible costs to Metropolitan due to damage of its facilities from inadequate stormwater collection and drainage away from Metropolitan properties due to lack of funds for proper operation, maintenance, and improvement of stormwater systems.

Business Analysis: Without this legislation, local agencies with stormwater management responsibilities will continue to face the current, relatively “high bar” of Proposition 218 voter approval requirements for enacting new fees and charges for stormwater services. Additionally, if not passed, funding of local stormwater management, including stormwater capture and treatment, will continue to be subject to legal uncertainty.

Staff Recommendation

Option #1



Dee Zinke
Assistant General Manager/Chief External
Affairs Officer
4/5/2017
Date



Jeffrey Kightlinger
General Manager
4/5/2017
Date

Attachment 1 – SB 231, as introduced 2/2/17

SENATE BILL**No. 231**

Introduced by Senator HertzbergFebruary 2, 2017

An act to amend Section 53750 of, and to add Section 53751 to, the Government Code, relating to local government finance.

LEGISLATIVE COUNSEL'S DIGEST

SB 231, as introduced, 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 term "sewer" for these purposes. The bill would also make findings and declarations relating to the definition of the 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. 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~~: *article, the following*
5 *words have the following meanings, and shall be read and*

2

1 *interpreted in light of the findings and declarations contained in*
2 *Section 53751:*

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:

3

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) "Record owner" means the owner of a parcel whose name
27 and address appears on the last equalized secured property tax
28 assessment roll, or in the case of any public entity, the State of
29 California, or the United States, means the representative of that
30 public entity at the address of that entity known to the agency.

31 (k) "*Sewer*" means services and systems provided by all real
32 estate, fixtures, and personal property owned, controlled, operated,
33 or managed in connection with or to facilitate sewage collection,
34 treatment, or disposition for sanitary or drainage purposes,
35 including lateral and connecting sewers, interceptors, trunk and
36 outfall lines, sanitary sewage treatment or disposal plants or works,
37 drains, conduits, outlets for surface or storm waters, and any and
38 all other works, property, or structures necessary or convenient
39 for the collection or disposal of sewage, industrial waste, or surface

1 *or storm waters. "Sewer system" shall not include a sewer system*
2 *that merely collects sewage on the property of a single owner.*

3 ~~(k)~~

4 (l) "Registered professional engineer" means an engineer
5 registered pursuant to the Professional Engineers Act (Chapter 7
6 commencing with Section 6700) of Division 3 of the Business
7 and Professions Code).

8 ~~(t)~~

9 (m) "Vector control" means any system of public improvements
10 or services that is intended to provide for the surveillance,
11 prevention, abatement, and control of vectors as defined in
12 subdivision (k) of Section 2002 of the Health and Safety Code and
13 a pest as defined in Section 5006 of the Food and Agricultural
14 Code.

15 ~~(m)~~

16 (n) "Water" means any system of public improvements intended
17 to provide for the production, storage, supply, treatment, or
18 distribution of water from any source.

19 SEC. 2. Section 53751 is added to the Government Code, to
20 read:

21 53751. The Legislature finds and declares all of the following:

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

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

28 (c) Proposition 218 was approved by the voters at the November
29 5, 1996, statewide General Election. Some court interpretations
30 of the law have constrained important tools that local governments
31 need to manage storm water and drainage runoff.

32 (d) Storm waters are carried off in storm sewers, and careful
33 management is necessary to reduce pollution. But a court decision
34 has excluded storm water from those provisions of Proposition
35 218 that apply to property-related fees for sewer and water,
36 preventing many important projects from being built.

37 (e) The court of appeal in *Howard Jarvis Taxpayers Ass'n v.*
38 *City of Salinas* (2002) 98 Cal.App.4th 1351 concluded that the
39 term "sewer," as used in Proposition 218, is "ambiguous" and
40 declined to use the statutory definition of the term "sewer system"

1 which was part of the then-existing law as Section 230.5 of the
2 Public Utilities Code.

3 (f) The court in *Howard Jarvis Taxpayers Ass'n v. City of*
4 *Salinas* (2002) 98 Cal.App.4th 1351 failed to follow long-standing
5 principles of statutory construction by disregarding the plain
6 meaning of the term "sewer." Courts have long held that statutory
7 construction rules apply to initiative measures, including in cases
8 that apply specifically to Proposition 218 (see *People v. Bustamante*
9 (1996) 57 Cal.App.4th 693, *Keller v. Chowchilla Water Dist.*
10 (2000) 80 Cal.App.4th 1006). When construing statutes, courts
11 look first to the words of the statute, which should be given their
12 usual, ordinary, and commonsense meaning (*People v. Mejia*
13 (2012) 211 Cal.App.4th 586, 611). The purpose of utilizing the
14 plain meaning of statutory language is to spare the courts the
15 necessity of trying to divine the voters' intent by resorting to
16 secondary or subjective indicators. The court in *Howard Jarvis*
17 *Taxpayers Ass'n v. City of Salinas* (2002) 98 Cal.App.4th 1351
18 asserted its belief as to what most voters thought when voting for
19 Proposition 218, but did not cite the voter pamphlet or other
20 accepted sources for determining legislative intent. Instead, the
21 court substituted its own judgment for the judgment of voters.

22 (g) Numerous sources predating Proposition 218 reject the
23 notion that the term "sewer" applies only to sanitary sewers,
24 including, but not limited to:

25 (1) Section 230.5 of the Public Utilities Code.

26 (2) Section 23010.3, which was first added by Chapter 1193 of
27 the Statutes of 1963.

28 (3) The Street Improvement Act of 1913 (repealed by Chapter
29 346 of the Statutes of 1963).

30 (4) The California Supreme Court stated in *Los Angeles County*
31 *Flood Control District v. Southern California Edison Co.* (1958)
32 51 Cal.2d 331, that "no distinction has been made between sanitary
33 sewers and storm drains or sewers."

34 (5) The term, "sewer" has been used interchangeably to refer
35 to both sanitary and storm sewers in many other cases, including,
36 but not limited to, *County of Riverside v. Whitlock* (1972) 22
37 Cal.App.3d 863, *Ramseier v. Oakley Sanitary Dist.* (1961) 197
38 Cal.App.2d 722, and *Torson v. Fleming* (1928) 91 Cal.App. 168.

39 (6) Dictionary definitions of sewer, which courts have found to
40 be an objective source for determining common or ordinary

6

1 meaning, including Websters (1976), American Heritage (1969),
2 and Oxford English Dictionary (1971).

3 (h) Prior legislation has affirmed particular interpretations of
4 words in Proposition 218, specifically Assembly Bill 2403 of the
5 2013–14 Regular Session (Chapter 78 of the Statutes of 2014).

6 (i) The Legislature reaffirms and reiterates that the definition
7 found in Section 230.5 of the Public Utilities Code is the definition
8 of “sewer” or “sewer service” that should be used in the Proposition
9 218 Omnibus Implementation Act.