

AMENDED IN ASSEMBLY JUNE 13, 2016

SENATE BILL

No. 1298

Introduced by Senator Hertzberg

February 19, 2016

~~An act to amend Section 846 of the Public Utilities Code, relating to electricity.~~ *An act to amend Sections 53750 and 53755 of, and to add Section 53756.5 to, the Government Code, relating to local government finance.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1298, as amended, Hertzberg. ~~Electrical restructuring: financing orders.~~ *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.

Existing statutory law establishes notice, protest, and hearing procedures for the levying of new or increased fees or charges by local government agencies pursuant to Article XIII D of the California Constitution.

This bill would define the terms "proportional cost of the service attributable to the parcel" and "sewer service," and would recast the definition of "water" to mean "water service," for these purposes. The bill would additionally specify that one vote per parcel may be counted

in determining whether a proposed fee or charge is approved by a majority vote, as specified.

The bill would additionally authorize an agency to impose a conservation and efficiency fee or charge for water service, in addition to any property-related fee or charge imposed for water service, to achieve specified conservation and efficiency purposes. The bill would provide that a conservation and efficiency fee or charge may raise revenue as an incident to its regulatory purpose and would require the agency to use any revenue to pay the cost of providing the service or for lowering the rate or rate structure of the associated property-related fee or charge. The bill would require a conservation and efficiency fee or charge to bear a fair or reasonable relationship to the burdens imposed on the local agency or the benefits received from the water service based on the amount of water used by each customer or class of customers, as specified.

~~Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. Existing law relative to restructuring of the electrical industry authorizes an electrical corporation to apply to the commission for a determination that certain transition costs, as defined, may be recovered through fixed transition amounts, which would constitute transition property, as defined, and provides, until December 31, 2016, for the issuance of financing orders and provides for the issuance of rate reduction bonds to be paid out of rates.~~

~~This bill would extend the authorization for the issuance of financing orders from December 31, 2016, to December 31, 2017.~~

Vote: majority. Appropriation: no. Fiscal committee: *yes-no*. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. The Legislature finds and declares all of the*
- 2 *following:*
- 3 *(a) The ongoing, historic drought has made clear that California*
- 4 *must invest in a 21st-century water management system capable*
- 5 *of effectively meeting the economic, social, and environmental*
- 6 *needs of the state.*
- 7 *(b) Sufficient and reliable funding to pay for local water projects*
- 8 *is necessary to improve the state's water infrastructure.*

1 (c) Proposition 218, approved in 1996, was meant to improve
2 transparency and accountability of local government fees. Some
3 court interpretations of the law have constrained three important
4 tools that local governments need to manage water supplies and
5 address water pollution: stormwater management, rates to
6 encourage water conservation, and assistance for low-income
7 Californians.

8 (d) Stormwater is a key source of local water supply, and careful
9 management is necessary to reduce pollution. But a court decision
10 has required stormwater and flood control programs to meet a
11 higher standard than other water-related services to raise capital,
12 preventing many important projects from being built.

13 (e) One important way to encourage water conservation is to
14 charge higher rates to customers using excessive amounts of water.
15 This is a common practice throughout the world and a requirement
16 for California's private water agencies. Unfortunately, a recent
17 court decision has made it difficult and confusing for local agencies
18 to implement this necessary tool.

19 (f) The United States Environmental Protection Agency has
20 found that water rates exceeding 2 percent of monthly income are
21 unaffordable, which is the case for millions of Californians. Private
22 water and energy utilities are required to offer programs to make
23 rates affordable to low-income households. Local governments in
24 California, however, are concerned that recent court decisions
25 regarding Proposition 218 could prohibit them from providing
26 the same service.

27 (g) This act is intended to provide guidance to local agencies
28 and courts on the implementation of Articles XIII C and XIII D of
29 the California Constitution and shall not be construed to amend
30 those articles.

31 SEC. 2. Section 53750 of the Government Code is amended to
32 read:

33 53750. For purposes of Article XIII C and Article XIII D of
34 the California Constitution and this article:

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

38 (b) "Assessment" means any levy or charge by an agency upon
39 real property that is based upon the special benefit conferred upon
40 the real property by a public improvement or service, that is

1 imposed to pay the capital cost of the public improvement, the
2 maintenance and operation expenses of the public improvement,
3 or the cost of the service being provided. “Assessment” includes,
4 but is not limited to, “special assessment,” “benefit assessment,”
5 “maintenance assessment,” and “special assessment tax.”

6 (c) “District” means an area that is determined by an agency to
7 contain all of the parcels that will receive a special benefit from a
8 proposed public improvement or service.

9 (d) “Drainage system” means any system of public
10 improvements that is intended to provide for erosion control, for
11 landslide abatement, or for other types of water drainage.

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

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

18 (g) “Identified parcel” means a parcel of real property that an
19 agency has identified as having a special benefit conferred upon
20 it and upon which a proposed assessment is to be imposed, or a
21 parcel of real property upon which a proposed property-related
22 fee or charge is proposed to be imposed.

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

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

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

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

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

37 (B) Implements or collects a previously approved tax, fee, or
38 charge, so long as the rate is not increased beyond the level
39 previously approved by the agency, and the methodology

1 previously approved by the agency is not revised so as to result in
2 an increase in the amount being levied on any person or parcel.

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

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

19 (j) *“Proportional cost of the service attributable to the parcel,”*
20 *when applied to a fee or charge for water or sewer service, means*
21 *the share of the total cost of providing water or sewer service to*
22 *water or sewer users within the service area reasonably*
23 *attributable to the parcel. The total cost of providing water or*
24 *sewer service includes all costs of acquiring water and water*
25 *rights, costs of collecting, conveying, treating, and managing water*
26 *and wastewater, costs of satisfying all regulatory requirements*
27 *lawfully imposed on water and sewer service providers, and costs*
28 *of providing communitywide water service in an equitable manner,*
29 *including the cost of lifeline water rates.*

30 (j)

31 (k) “Record owner” means the owner of a parcel whose name
32 and address appears on the last equalized secured property tax
33 assessment roll, or in the case of any public entity, the State of
34 California, or the United States, means the representative of that
35 public entity at the address of that entity known to the agency.

36 (l) *“Sewer service” means services provided by all real estate,*
37 *fixtures, and personal property owned, controlled, operated, or*
38 *managed in connection with or to facilitate sewage collection,*
39 *treatment, or disposition for sanitary or drainage purposes,*
40 *including lateral and connecting sewers, interceptors, trunk and*

1 *outfall lines, sanitary sewage treatment or disposal plants or works,*
2 *drains, conduits, outlets for surface or storm waters, and any and*
3 *all other works, property, or structures necessary or convenient*
4 *for the collection or disposal of sewage, industrial waste, or surface*
5 *or storm waters. “Sewer system” shall not include a sewer system*
6 *that merely collects sewage on the property of a single owner.*

7 ~~(k)~~

8 (m) “Registered professional engineer” means an engineer
9 registered pursuant to the Professional Engineers Act (Chapter 7
10 commencing with Section 6700) of Division 3 of the Business
11 and Professions Code).

12 ~~(l)~~

13 (n) “Vector control” means any system of public improvements
14 or services that is intended to provide for the surveillance,
15 prevention, abatement, and control of vectors as defined in
16 subdivision (k) of Section 2002 of the Health and Safety Code and
17 a pest as defined in Section 5006 of the Food and Agricultural
18 Code.

19 ~~(m)~~ “Water”

20 (o) “Water service” means *services provided by any system of*
21 *public improvements intended to provide for the production,*
22 *storage, supply, treatment, or distribution of water from any source.*

23 *SEC. 3. Section 53755 of the Government Code is amended to*
24 *read:*

25 53755. (a) (1) The notice required by paragraph (1) of
26 subdivision (a) of Section 6 of Article XIII D of the California
27 Constitution of a proposed increase of an existing fee or charge
28 for a property-related service being provided to a parcel may be
29 given by including it in the agency’s regular billing statement for
30 the fee or charge or by any other mailing by the agency to the
31 address to which the agency customarily mails the billing statement
32 for the fee or charge.

33 (2) The notice required by paragraph (1) of subdivision (a) of
34 Section 6 of Article XIII D of the California Constitution of a
35 proposed new fee or charge may be given in the manner authorized
36 for notice of an increase of a fee or charge if the agency is currently
37 providing an existing property-related service to the address.

38 (3) If the agency desires to preserve any authority it may have
39 to record or enforce a lien on the parcel to which service is
40 provided, the agency shall also mail notice to the recordowner’s

1 address shown on the last equalized assessment roll if that address
2 is different than the billing or service address.

3 (b) One written protest per parcel, filed by an owner or tenant
4 of the parcel, shall be counted in calculating a majority protest to
5 a proposed new or increased fee or charge subject to the
6 requirements of Section 6 of Article XIII D of the California
7 Constitution.

8 (c) *One vote per parcel, filed by an owner or tenant of the*
9 *parcel, shall be counted in determining whether a proposed fee*
10 *or charge is approved by a majority vote pursuant to subdivision*
11 *(c) of Section 6 of Article XIII D of the California Constitution.*

12 ~~(e)~~

13 (d) Any agency that bills, collects, and remits a fee or charge
14 on behalf of another agency may provide the notice required by
15 Section 6 of Article XIII D of the California Constitution on behalf
16 of the other agency.

17 *SEC. 4. Section 53756.5 is added to the Government Code, to*
18 *read:*

19 *53756.5. (a) The Legislature finds and declares all of the*
20 *following:*

21 *(1) Water service may be used for purposes that are*
22 *indispensable to the use of the property, including, but not limited*
23 *to, cooking, sanitation, and reasonable irrigation.*

24 *(2) Water service may also be used for purposes that are not*
25 *indispensable to the use of property, including, but not limited to,*
26 *excessive indoor use, unabated leakage, excessive irrigation, and*
27 *other activities that constitute an inefficient use of the water.*

28 *(3) The amount of water that is indispensable to the use of a*
29 *property may vary depending on the use to which the property is*
30 *put, local conditions, water shortages, environmental factors, and*
31 *other factors affecting water demand and supply availability.*

32 *(4) Local agencies should have the authority to determine the*
33 *amount of water that is indispensable for property use, given the*
34 *above conditions.*

35 *(5) Charges for water that is not indispensable for property use*
36 *are not imposed as an incident of property ownership and therefore*
37 *are not property-related charges as defined by Article XIII D of*
38 *the California Constitution.*

1 (6) Charges for water that is not indispensable for property use
2 may be either specific benefits or specific government services
3 under Article XIII C of the California Constitution.

4 (7) Article XIII C of the California Constitution does not identify
5 the costs that may be associated with water service, define “a fair
6 or reasonable relationship” between the costs of the service and
7 the burdens or benefits associated with the service, or prescribe
8 a particular method for allocating the costs of providing
9 nonproperty-related water services or benefits.

10 (b) An agency may, in addition to any property-related fee or
11 charge imposed pursuant to Article XIII D of the California
12 Constitution and this article for water service, impose or increase
13 a separate and distinct conservation and efficiency fee or charge
14 for the same service to create price signals to encourage
15 conservation and increased efficiency in the use of water. A
16 conservation and efficiency fee or charge imposed pursuant to this
17 section may be imposed on water that is not indispensable for
18 property use. A conservation and efficiency fee or charge imposed
19 pursuant to this section may be imposed for purposes including,
20 but not limited to:

21 (1) Deterrence of excess consumption of water, as determined
22 by the local agency.

23 (2) Encouragement of the adoption of technologies that support
24 more efficient use of water.

25 (3) To encourage compliance with the goals of avoiding waste
26 and unreasonable use of water pursuant to Section 2 of Article X
27 of the California Constitution.

28 (c) (1) A conservation and efficiency fee or charge may raise
29 revenue as an incident to its intended purpose. Any revenue
30 produced shall only be used to pay the costs of providing water
31 service, to lower the rate or rate structure of the associated
32 property-related fee or charge for water service, or to provide
33 lower rates or rebates for disadvantaged households. The total
34 amount collected from the property-related fee or charge for water
35 service and the conservation and efficiency fee or charge shall not
36 exceed the reasonable costs incurred by the agency to provide the
37 water service.

38 (2) The rate of a conservation and efficiency fee or charge shall
39 bear a fair or reasonable relationship to the burden imposed on
40 the local agency or the benefits received from the water service

1 based on the amount of water used by each customer or class of
2 customers. The agency may determine that the burden on, or the
3 benefits derived from, the provision of water service per unit of
4 water used is greater for customers who use relatively large
5 amounts of water for their type and size of real property. The
6 agency may establish a rate structure for a conservation and
7 efficiency fee or charge intended to encourage conservation and
8 increased efficiency of water use in order to bring the burdens of
9 providing water service to customers or classes of customers into
10 reasonable balance. The charges may be structured in a tiered,
11 ascending, or other incremental manner. In addition, the agency
12 may determine that the fairness of the rate structure is enhanced
13 if it provides for lower rates for disadvantaged households, also
14 known as lifeline rates.

15 (d) Consideration and imposition or increase of a conservation
16 and efficiency fee or charge shall comply with the notice, hearing,
17 protest, and election requirements, if any, required by Article
18 XIII D of the California Constitution. However, the requirements
19 of paragraph (3) of subdivision (b) of Section 6 of Article XIII D
20 shall not apply to any conservation and efficiency fee or charge
21 levied pursuant to this section.

22 (e) (1) For the purposes of this section, “reasonable costs” of
23 the specific benefit or specific government service shall include,
24 but are not limited to, costs that will, directly or indirectly, enable
25 an agency to meet water demands, reduce water demands, conserve
26 potable water supplies, procure water supplies to provide water
27 that is not indispensable to the use of property, and provide
28 communitywide water service in an equitable manner, including
29 lifeline water rates. The determination of reasonable costs may
30 consider the relative income of the payer of the fee or charge.

31 (2) For the purposes of this section and Article XIII C of the
32 California Constitution, “fair or reasonable relationship” may
33 include a relationship consistent with principles of equity that hold
34 that more affluent individuals benefit more from public services,
35 including water service, than less affluent individuals receiving
36 the same service.

37 SEC. 5. The provisions of this act are severable. If any
38 provision of this act or its application is held invalid, that invalidity
39 shall not affect other provisions or applications that can be given
40 effect without the invalid provision or application.

1 SECTION 1. ~~Section 846 of the Public Utilities Code is~~
2 ~~amended to read:~~
3 846. ~~The authority of the commission to issue financing orders~~
4 ~~pursuant to Section 841 shall expire on December 31, 2017. The~~
5 ~~expiration of the authority shall have no effect upon financing~~
6 ~~orders adopted by the commission pursuant to this article or any~~
7 ~~transition property arising therefrom, or upon the charges~~
8 ~~authorized to be levied thereunder, or the rights, interests, and~~
9 ~~obligations of the electrical corporation or a financing entity or~~
10 ~~holders of transition bonds pursuant to the financing order, or the~~
11 ~~authority of the commission to monitor, supervise, or take further~~
12 ~~action with respect to the order in accordance with the terms of~~
13 ~~this article and of the order.~~