

AMENDED IN ASSEMBLY AUGUST 1, 2016

AMENDED IN ASSEMBLY JUNE 13, 2016

SENATE BILL

No. 1298

Introduced by Senator Hertzberg

February 19, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1298, as amended, 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.

~~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,”~~ *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.

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. 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.
- 9 (c) Proposition 218, approved in 1996, was meant to improve
- 10 transparency and accountability of local government fees. Some
- 11 court interpretations of the law have constrained three important
- 12 tools that local governments need to manage water supplies and
- 13 *supplies*, address water ~~pollution~~: *pollution and provide* stormwater
- 14 *management, rates to encourage water conservation, and assistance*
- 15 *for low-income Californians: management.*
- 16 (d) Stormwater is a key source of local water supply, and careful
- 17 management is necessary to reduce pollution. But a court decision
- 18 has required stormwater and flood control programs to meet a
- 19 higher standard than other water-related services to raise capital,
- 20 preventing many important projects from being built.

1 ~~(e) One important way to encourage water conservation is to~~
2 ~~charge higher rates to customers using excessive amounts of water.~~
3 ~~This is a common practice throughout the world and a requirement~~
4 ~~for California’s private water agencies. Unfortunately, a recent~~
5 ~~court decision has made it difficult and confusing for local agencies~~
6 ~~to implement this necessary tool.~~

7 ~~(f) The United States Environmental Protection Agency has~~
8 ~~found that water rates exceeding 2 percent of monthly income are~~
9 ~~unaffordable, which is the case for millions of Californians. Private~~
10 ~~water and energy utilities are required to offer programs to make~~
11 ~~rates affordable to low-income households. Local governments in~~
12 ~~California, however, are concerned that recent court decisions~~
13 ~~regarding Proposition 218 could prohibit them from providing the~~
14 ~~same service.~~

15 ~~(g)~~

16 ~~(e) This act is intended to provide guidance to local agencies~~
17 ~~and courts on the implementation of Articles XIII C and XIII D of~~
18 ~~the California Constitution and shall not be construed to amend~~
19 ~~those articles.~~

20 SEC. 2. Section 53750 of the Government Code is amended
21 to read:

22 53750. For purposes of Article XIII C and Article XIII D of
23 the California Constitution and this article:

24 (a) “Agency” means any local government as defined in
25 subdivision (b) of Section 1 of Article XIII C of the California
26 Constitution.

27 (b) “Assessment” means any levy or charge by an agency upon
28 real property that is based upon the special benefit conferred upon
29 the real property by a public improvement or service, that is
30 imposed to pay the capital cost of the public improvement, the
31 maintenance and operation expenses of the public improvement,
32 or the cost of the service being provided. “Assessment” includes,
33 but is not limited to, “special assessment,” “benefit assessment,”
34 “maintenance assessment,” and “special assessment tax.”

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

38 (d) “Drainage system” means any system of public
39 improvements that is intended to provide for erosion control, for
40 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, 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, 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, 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

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) “Proportional cost of the service attributable to the parcel,”
8 when applied to a fee or charge for water or sewer service, means
9 the share of the total cost of providing water or sewer service to
10 water or sewer users within the service area reasonably attributable
11 to the parcel. The total cost of providing water or sewer service
12 includes all costs of acquiring water and water rights, costs of
13 collecting, conveying, treating, and managing water and
14 wastewater, *and* costs of satisfying all regulatory requirements
15 lawfully imposed on water and sewer service providers, ~~and costs~~
16 ~~of providing communitywide water service in an equitable manner,~~
17 ~~including the cost of lifeline water rates.~~ *providers.*

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

23 (l) “Sewer service” means services provided by all real estate,
24 fixtures, and personal property owned, controlled, operated, or
25 managed in connection with or to facilitate sewage collection,
26 treatment, or disposition for sanitary or drainage purposes,
27 including lateral and connecting sewers, interceptors, trunk and
28 outfall lines, sanitary sewage treatment or disposal plants or works,
29 drains, conduits, outlets for surface or storm waters, and any and
30 all other works, property, or structures necessary or convenient
31 for the collection or disposal of sewage, industrial waste, or surface
32 or storm waters. “Sewer system” shall not include a sewer system
33 that merely collects sewage on the property of a single owner.

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

38 (n) “Vector control” means any system of public improvements
39 or services that is intended to provide for the surveillance,
40 prevention, abatement, and control of vectors as defined in

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

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

8 ~~SEC. 3. Section 53755 of the Government Code is amended~~
9 ~~to read:~~

10 ~~53755. (a) (1) The notice required by paragraph (1) of~~
11 ~~subdivision (a) of Section 6 of Article XIII D of the California~~
12 ~~Constitution of a proposed increase of an existing fee or charge~~
13 ~~for a property-related service being provided to a parcel may be~~
14 ~~given by including it in the agency’s regular billing statement for~~
15 ~~the fee or charge or by any other mailing by the agency to the~~
16 ~~address to which the agency customarily mails the billing statement~~
17 ~~for the fee or charge.~~

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

23 ~~(3) If the agency desires to preserve any authority it may have~~
24 ~~to record or enforce a lien on the parcel to which service is~~
25 ~~provided, the agency shall also mail notice to the recordowner’s~~
26 ~~address shown on the last equalized assessment roll if that address~~
27 ~~is different than the billing or service address.~~

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

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

37 ~~(d) Any agency that bills, collects, and remits a fee or charge~~
38 ~~on behalf of another agency may provide the notice required by~~
39 ~~Section 6 of Article XIII D of the California Constitution on behalf~~
40 ~~of the other agency.~~

1 SEC. 4. ~~Section 53756.5 is added to the Government Code, to~~
2 ~~read:~~

3 ~~53756.5. (a) The Legislature finds and declares all of the~~
4 ~~following:~~

5 ~~(1) Water service may be used for purposes that are~~
6 ~~indispensable to the use of the property, including, but not limited~~
7 ~~to, cooking, sanitation, and reasonable irrigation.~~

8 ~~(2) Water service may also be used for purposes that are not~~
9 ~~indispensable to the use of property, including, but not limited to,~~
10 ~~excessive indoor use, unabated leakage, excessive irrigation, and~~
11 ~~other activities that constitute an inefficient use of the water.~~

12 ~~(3) The amount of water that is indispensable to the use of a~~
13 ~~property may vary depending on the use to which the property is~~
14 ~~put, local conditions, water shortages, environmental factors, and~~
15 ~~other factors affecting water demand and supply availability.~~

16 ~~(4) Local agencies should have the authority to determine the~~
17 ~~amount of water that is indispensable for property use, given the~~
18 ~~above conditions.~~

19 ~~(5) Charges for water that is not indispensable for property use~~
20 ~~are not imposed as an incident of property ownership and therefore~~
21 ~~are not property-related charges as defined by Article XIII D of~~
22 ~~the California Constitution.~~

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

26 ~~(7) Article XIII C of the California Constitution does not identify~~
27 ~~the costs that may be associated with water service, define “a fair~~
28 ~~or reasonable relationship” between the costs of the service and~~
29 ~~the burdens or benefits associated with the service, or prescribe a~~
30 ~~particular method for allocating the costs of providing~~
31 ~~nonproperty-related water services or benefits.~~

32 ~~(b) An agency may, in addition to any property-related fee or~~
33 ~~charge imposed pursuant to Article XIII D of the California~~
34 ~~Constitution and this article for water service, impose or increase~~
35 ~~a separate and distinct conservation and efficiency fee or charge~~
36 ~~for the same service to create price signals to encourage~~
37 ~~conservation and increased efficiency in the use of water. A~~
38 ~~conservation and efficiency fee or charge imposed pursuant to this~~
39 ~~section may be imposed on water that is not indispensable for~~
40 ~~property use. A conservation and efficiency fee or charge imposed~~

1 pursuant to this section may be imposed for purposes including,
2 but not limited to:

3 (1) ~~Deterrence of excess consumption of water, as determined~~
4 ~~by the local agency.~~

5 (2) ~~Encouragement of the adoption of technologies that support~~
6 ~~more efficient use of water.~~

7 (3) ~~To encourage compliance with the goals of avoiding waste~~
8 ~~and unreasonable use of water pursuant to Section 2 of Article X~~
9 ~~of the California Constitution.~~

10 (e) (1) ~~A conservation and efficiency fee or charge may raise~~
11 ~~revenue as an incident to its intended purpose. Any revenue~~
12 ~~produced shall only be used to pay the costs of providing water~~
13 ~~service, to lower the rate or rate structure of the associated~~
14 ~~property-related fee or charge for water service, or to provide lower~~
15 ~~rates or rebates for disadvantaged households. The total amount~~
16 ~~collected from the property-related fee or charge for water service~~
17 ~~and the conservation and efficiency fee or charge shall not exceed~~
18 ~~the reasonable costs incurred by the agency to provide the water~~
19 ~~service.~~

20 (2) ~~The rate of a conservation and efficiency fee or charge shall~~
21 ~~bear a fair or reasonable relationship to the burden imposed on the~~
22 ~~local agency or the benefits received from the water service based~~
23 ~~on the amount of water used by each customer or class of~~
24 ~~customers. The agency may determine that the burden on, or the~~
25 ~~benefits derived from, the provision of water service per unit of~~
26 ~~water used is greater for customers who use relatively large~~
27 ~~amounts of water for their type and size of real property. The~~
28 ~~agency may establish a rate structure for a conservation and~~
29 ~~efficiency fee or charge intended to encourage conservation and~~
30 ~~increased efficiency of water use in order to bring the burdens of~~
31 ~~providing water service to customers or classes of customers into~~
32 ~~reasonable balance. The charges may be structured in a tiered,~~
33 ~~ascending, or other incremental manner. In addition, the agency~~
34 ~~may determine that the fairness of the rate structure is enhanced~~
35 ~~if it provides for lower rates for disadvantaged households, also~~
36 ~~known as lifeline rates.~~

37 (d) ~~Consideration and imposition or increase of a conservation~~
38 ~~and efficiency fee or charge shall comply with the notice, hearing,~~
39 ~~protest, and election requirements, if any, required by Article~~
40 ~~XIII D of the California Constitution. However, the requirements~~

1 of paragraph (3) of subdivision (b) of Section 6 of Article XIII D
2 shall not apply to any conservation and efficiency fee or charge
3 levied pursuant to this section.

4 (e) (1) For the purposes of this section, “reasonable costs” of
5 the specific benefit or specific government service shall include,
6 but are not limited to, costs that will, directly or indirectly, enable
7 an agency to meet water demands, reduce water demands, conserve
8 potable water supplies, procure water supplies to provide water
9 that is not indispensable to the use of property, and provide
10 communitywide water service in an equitable manner, including
11 lifeline water rates. The determination of reasonable costs may
12 consider the relative income of the payer of the fee or charge.

13 (2) For the purposes of this section and Article XIII C of the
14 California Constitution, “fair or reasonable relationship” may
15 include a relationship consistent with principles of equity that hold
16 that more affluent individuals benefit more from public services,
17 including water service, than less affluent individuals receiving
18 the same service.

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