

Date of Hearing: May 1, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

AB 2257 (Wilson) – As Amended April 23, 2024

**SUBJECT:** Local government: property-related water and sewer fees and assessments: remedies.

**SUMMARY:** Establishes a procedure whereby a ratepayer for water or sewer services must exhaust specified administrative remedies to contest a new or increased fee or assessment in order for that ratepayer to be eligible to bring a lawsuit contesting the fee or assessment.

Specifically, **this bill:**

- 1) Defines the following terms:
  - a) “Exhaustion of remedies requirement” as the written objection requirement under 2) below.
  - b) “Fee or assessment” as the amount of any property-related water or sewer fee or charge, or any special assessment levied or the methodology used to develop and levy the fee, charge, or assessment.
  - c) “Sewer” to include systems, 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 or convenient for the collection or disposal of sewage, industrial waste, or surface or storm waters. “Sewer system” shall not include a sewer system that merely collects sewage on the property of a single owner.
  - d) “Water” means any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water from any source.
- 2) Provides that for the purposes of any fee or assessment adopted by a local agency pursuant to Section 4 or 6 of Article XIII D of the California Constitution, if the local agency complies with the procedures described in 3) below, a person or entity shall be prohibited from bringing a judicial action or proceeding alleging noncompliance with Article XIII D of the California Constitution, for any new, increased, or extended fee or assessment, unless that person or entity has timely submitted to the local agency a written objection to that fee or assessment that specifies the ground for alleging noncompliance.
- 3) Specifies that that the exhaustion of remedies requirement authorized by 2) above, applies only if the local agency does all of the following:
  - a) Makes available to the public a proposed fee or assessment no less than 45 days prior to the deadline for a ratepayer to submit an objection, as established by the local agency pursuant to d) below.

- b) Posts on its internet website a written basis for the fee or assessment.
  - c) Mails the written basis described in b) above, to a property owner upon request.
  - d) Provides at least 45 days for a property owner to review the proposed fee or assessment and to timely submit to the local agency a written objection to that fee or assessment that specifies the grounds for alleging noncompliance. To be considered timely, any written objection shall be submitted by a deadline established by the local agency, which shall be no less than 45 days after notice is provided pursuant to Section 4 or 6 of Article XIII D of the California Constitution, as applicable.
  - e) Considers and responds in writing, including the grounds for which a challenge is not resulting in amendments to the proposed fee or assessment, to any timely submitted written objections prior to the close of the protest hearing or ballot tabulation hearing required under Section 4 or 6 of Article XIII D of the California Constitution. The agency's response shall explain the substantive basis for retaining or altering the proposed fee or assessment in response to the written objection. Timely submitted written objections and agency responses shall be presented to the local agency's governing body for consideration prior to or during a protest hearing or ballot tabulation hearing required under Section 4 or 6 of Article XIII D of the California Constitution.
  - f) Includes in the written notice, sent pursuant to Article XIII D of the California Constitution, a statement that contains all of the following information:
    - i) That all written objections must be submitted within the written objection period set by the local agency and that a failure to timely object in writing bars any right to challenge that fee or assessment through a legal proceeding.
    - ii) All substantive and procedural requirements for submitting an objection to the proposed fee or assessment.
  - g) Complete the procedures described in a) through f) above, inclusive, prior to the completion of the protest hearing and ballot tabulating hearing required by Article XIII D of the California Constitution.
- 4) Provides that the local agency's governing body, in exercising its legislative discretion, shall determine whether the written objections and the agency's response warrant clarification to the proposed fee or assessment, a reduction in the proposed fee or assessment, further review before making a determination on whether clarification or the reduction is needed, or whether to proceed with the protest hearing or ballot tabulation required under Article XIII D of the California Constitution.
- 5) Requires the local agency's response to the timely submitted written objections, as specified, to go to the weight of the evidence supporting the agency's compliance with the substantive limitations on fees and assessments imposed by Article XIII D of the California Constitution. There shall be no independent cause of action as to the adequacy of a local agency's response.
- 6) Provides that, notwithstanding any law, if a local agency adopts a fee or assessment and complies with 3) above, any judicial action or proceeding to review, invalidate, challenge, set

aside, rescind, void, or annul the fee or assessment for failure to comply with the procedural and substantive requirements of Section 4 or 6 of Article XIII D of the California Constitution in the fee or assessment setting process shall be subject to the following requirements:

- a) Except as provided in b) below, the court's review shall be limited to the record of proceedings before the local agency for that fee or assessment as follows:
  - i) Any cost-of-service or rate study or report, any engineer's report, agency staff reports, and related documents prepared by the local agency with respect to the fee or assessment.
  - ii) Any transcript or minutes of the proceedings at which the decisionmaking body of the local agency heard testimony or public comment on the fee or assessment, and any transcript or minutes of the proceeding before any advisory body to the local agency that were presented to the decisionmaking body before action on the fee or assessment.
  - iii) All notices issued by the local agency for purposes of complying with this bill, to comply with the requirements of Article XIII D of the California Constitution, or with any other law requiring notice.
  - iv) All timely submitted written objections and any local agency responses on those objections, as specified.
  - v) All written evidence or correspondence related to the fee or assessment submitted to, or transmitted from, the local agency prior to the completion of the protest hearing or ballot tabulation hearing required by Article XIII D of the California Constitution.
  - vi) Documentation of the local agency's final decision on the fee or assessment, including any ordinance, resolution, rule, regulation, meeting minutes, or other record of the local agency's decision.
  - vii) All protests, ballots, and records of the tabulation, protests, or ballots made in connection with the fee or assessment.
  - viii) All written evidence or documentation supporting the fee or assessment in the local agency's files prior to the completion of the protest hearing or ballot tabulation hearing required by Article XIII D of the California Constitution.
- b) Evidence outside the record of proceedings before the local agency may be submitted under the following circumstances:
  - i) Where evidence is relevant to issues other than the validity of the fee or assessment, such as a petitioner's standing and capacity to sue.
  - ii) Where the evidence is relevant to affirmative defenses, including, but not limited to, laches, estoppel, and res judicata.
  - iii) Where evidence is relevant to the accuracy and completeness of the administrative record certified by the local agency.

- iv) Where evidence is relevant to the local agency's compliance with the procedures set forth in this bill.
- v) Where evidence is necessary to explain information in the administrative record to demonstrate compliance with Article XIII D of the California Constitution.
- c) Specifies that nothing in 6) above shall preclude any civil action related to a local agency's failure to implement a fee or assessment in compliance with the manner adopted by the local agency.
- d) Contains findings and declarations to support its purposes.

**EXISTING LAW:**

- 1) Provides that no tax, assessment, fee, or charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except:
  - a) Ad valorem property tax imposed, as specified.
  - b) Any special tax receiving a two-thirds vote, as specified.
  - c) Assessments, as specified.
  - d) Fees or charges for property related services, as specified. (Cal. Const. art. XIII D § 3 (a).)
- 2) Provides that an agency which proposes to levy an assessment shall identify all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed. The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property related service being provided. No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and an agency shall separate the general benefits from the special benefits conferred on a parcel. (Cal. Const. art. XIII D § 4 (a).)
- 3) Specifies that all assessments shall be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California. (Cal. Const. art. XIII D § 4 (b).)
- 4) Provides that the amount of the proposed assessment for each identified parcel shall be calculated and the record owner of each parcel shall be given written notice by mail of the proposed assessment, the total amount thereof chargeable to the entire district, the amount chargeable to the owner's particular parcel, the duration of the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, together with the date, time, and location of a public hearing on the proposed assessment. (Cal. Const. art. XIII D § 4 (c).)
- 5) Specifies that the agency shall conduct a public hearing upon the proposed assessment not less than 45 days after mailing the notice of the proposed assessment to record owners of each identified parcel. At the public hearing, the agency shall consider all protests against the

proposed assessment and tabulate the ballots. The agency shall not impose an assessment if there is a majority protest. A majority protest exists if, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. In tabulating the ballots, the ballots shall be weighted according to the proportional financial obligation of the affected property. (Cal. Const. art. XIII D § 4 (e).)

- 6) Provides that an agency must adhere to the following procedures prior to imposing or increasing any fee or charge:
  - a) Provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge.
  - b) Conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners of each identified parcel upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge. (Cal. Const. art XIII D § 6 (a).)
- 7) Prohibits a fee or charge from being extended, imposed, or increased by any agency unless it meets all of the following requirements:
  - a) Revenues derived from the fee or charge do not exceed the funds required to provide the property related service.
  - b) Revenues derived from the fee or charge are not to be used for any purpose other than that for which the fee or charge was imposed.
  - c) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership does not exceed the proportional cost of the service attributable to the parcel.
  - d) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question and that fees or charges based on potential or future use of a service are not permitted.
  - e) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners. (Cal. Const. art. XII D § 6 (b).)
- 8) Provides that the notice required by 6) may be given by including it in the agency's regular billing statement for the fee or charge or by any other mailing by the agency to the address to which the agency customarily mails the billing statement for the fee or charge, but if an agency desires to preserve any authority it may have to record or enforce a lien on the parcel to which service is provided, the agency must also mail notice to the recordowner's address

shown on the last equalized assessment roll if that address is different than the billing or service address. (Government Code § 53755 (a).)

- 9) Requires any judicial action or proceeding to attack, review, set aside, void, validate, or annul an ordinance, resolution, or motion adopting a fee or charge for water or sewer service, or modifying or amending an existing fee or charge for water or sewer service, to be commenced within 120 days of the effective date or of the date of the final passage, adoption, or approval of the ordinance, resolution, or motion, whichever is later. (Government Code § 53759 (a).)

**FISCAL EFFECT:** None.

**COMMENTS:**

- 1) **Financing Water Infrastructure.** Local governments in California provide most water related services in the state which include water service, sewer service, flood control, and storm water management. A 2014 Public Policy Institute of California (PPIC) report, *Paying for Water in California*, outlines four sources of funding currently used for water in California: a) Fees, which include water and waste water bills, property assessments or fees, developer or connection fees, and permitting fees; b) Taxes, which include both general and special taxes, including parcel taxes; c) Fines and penalties, which include excessive pumping on groundwater or directly to customers in violation of rationing restrictions during drought emergencies; and, d) Bonds, which include general obligation and revenue bonds. Local agencies frequently point to the series of constitutional reforms, Proposition 13 (1978), Proposition 218 (1996), and Proposition 26 (2010), that have made it increasingly more difficult to generate the necessary revenue to fund the costs of providing water and other essential services.
- 2) **Property-Related Fees.** The California Constitution requires voter approval for taxes and many other fees and charges. Proposition 218 (Article XIII D of the California Constitution) distinguishes among taxes, assessments, and fees for property-related revenues, and requires certain actions before such revenues may be collected. Proposition 218 (1996) imposed voter approval requirements for most “property-related fees”—any levy other than an *ad valorem* tax, a special tax, or an assessment imposed by an agency on a parcel or on a person as an incident of property ownership, including a user fee or charge for a property-related service.

Before a local government can charge a new property-related fee, or increase an existing one, Proposition 218 requires local officials to:

- a) Identify the parcels to be charged.
- b) Calculate the fee for each parcel.
- c) Notify the parcels’ owners in writing about the fees and the hearing.
- d) Hold a public hearing to consider and count protests.
- e) Abandon the fees if a majority of the parcels’ owners protest.

New, increased, or extended property-related fees generally require voter approval by one of the following: a majority-vote of the affected property owners; two-thirds registered voter approval; or weighted ballot approval by the affected property owners.

Fees or charges for property related services cannot exceed the proportional cost of providing service to the parcel and must be used only for the purposes for which they were collected. Property-related fees must also only fund services actually used by or immediately available to the property owner, not based on potential or future use. Finally, Proposition 218 prohibits local governments from imposing property-related fees or charges for general governmental services—including fire, police, ambulance, or library services—if the service is available to the public at large in substantially the same manner as it is to property owners.

Water, sewer, and refuse collection services are exempt from Proposition 218's voter approval requirements, but must meet all other procedural and substantive requirements in Proposition 218, including the requirement to hold a protest hearing not less than 45 days after mailing a notice of new or increased rates to affected property owners. If a majority protest the fee, based on the proportional obligation of the affected property, then the local agency cannot impose the fee.

- 3) **Assessments.** Post-Proposition 13, assessments gained momentum as a new source of funding. Most assessments are levied against real property, and are generally collected on the property tax roll, secured by a lien against the assessed property, and subject to Proposition 218. Proposition 218 includes requirements to determine which properties will have a special benefit conferred upon them and the apportionment of each assessment. Local agencies must determine the special benefit for each identified parcel and separate the general benefits, because only special benefits are assessable. The cost of the assessment cannot exceed the reasonable cost of the proportional special benefit that a parcel receives.

Property-based assessment notice, protest, and hearing requirements for new, extended, or increased assessments are governed by Proposition 218, which involves mailed protest ballots to all assessed property owners, a 45-day protest period, and a public hearing at which protests are counted and the presence or absence of a majority protest is determined. After complying with notice, protest, and hearing requirements, if a majority protest is not received from property owners, the legislative body may adopt a resolution to establish the assessment. All assessments shall be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California.

- 4) **Exhaustion of Remedies.** Of importance to this measure, in 2019 the California Supreme Court ruled that challenges to the methodology utilized to determine rates are by their nature "substantive" as the existing law provides no, "clearly defined machinery for the submission, evaluation, and resolution of complaints by aggrieved parties." (*Plantier v. City of Ramona Municipal Water District* (2019) 7 Cal.5th 372, 384.). The Court opened its ruling by saying, "The question here is a narrow one. When an agency considers increasing a property-related fee, must a fee payor challenging the *method* of fee allocation first exhaust 'administrative remedies' by participating in a Proposition 218 hearing that addresses only a proposed *rate* increase? The answer is no."

According to the Assembly Judiciary Committee analysis for this bill, "As noted this bill's exhaustion of remedies provisions seek to promote public participation in the early stages of

a fee or assessment being considered by a local agency. The proponents of this bill note that it is modeled after provisions regarding litigation under the California Environmental Quality Act as well as the state's General Plan laws, both of which require a party to have commented on the matter in order to subsequently bring suit challenging a local agency decision. It should be noted that this bill does not permit a local agency to adopt rates that violate Proposition 218, rather it simply requires that a party seeking to litigate a rate structure must have previously objected to the rates before the public agency renders its final decision. For example, should this bill become law, a property owner could still sue an agency contending that a water rate was set at a level in excess of the actual cost of service. This bill would simply have required that property owner to have first objected through the public comment process described above. In this sense this bill appears to strike a reasonable balance between public participation, public enforcement of Proposition 218, and local agencies need for certainty in the ratemaking process.”

- 5) **Bill Summary.** This bill would prohibit, if a local agency complies with specified procedures, a person or entity from bringing a judicial action or proceeding alleging noncompliance with the constitutional provisions for any new, increased, or extended fee or assessment, as defined, unless that person or entity has timely submitted to the local agency a written objection to that fee or assessment that specifies the grounds for alleging noncompliance. To be considered timely, any written objection must be submitted by a deadline established by the local agency, which must not be less than 45 days after the notice required by Proposition 218 is provided.

Additionally, this bill would provide that in any judicial action or proceeding to review, invalidate, or challenge the fee or assessment for failure to comply with the requirements of specified constitutional provisions, the court's review is limited to a record of proceedings containing specified documents, except as otherwise provided. The Association of California Water Agencies is the sponsor of this bill.

- 6) **Author's Statement.** According to the author, “AB 2257 would authorize public agencies to adopt procedures for the submittal and consideration of public comments regarding proposed water or sewer rates or assessments. If an agency elects to adopt exhaustion procedures, a person would be required to timely submit written comments that specify the grounds for alleging that the fees do not comply with Proposition 218 in order to challenge the fees in court. AB 2257 would place new obligations on public agencies during the ratemaking process, by requiring agencies to provide written responses to all comments received before acting on the proposed fees. AB 2257 would also detail documents that would comprise the administrative record in the event of litigation.

“AB 2257 would build upon Proposition 218's existing procedural requirements by creating a clear and robust mechanism for customers to raise questions, concerns, comments, and criticisms of a proposed rate structure. The agency's governing body would have the benefit of hearing the evidence, which would include objections and the agency's responses, and apply its reasoned discretion and expertise. This is especially valuable in ratemaking cases in which evidence and policies are highly technical. The process would serve to foster better-informed administrative decisions, which benefit the objector, the public agency, and ratepayers that the agency serves. It would also help agencies develop more defensible rates and build rapport and trust with their ratepayers.”



- 7) **Arguments in Support.** According to the Association of California Water Agencies, the sponsor of this bill, and a coalition of supporters, “The revenue necessary for public agencies to fulfill their essential government functions and adapt to a changing climate predominantly comes from service rates and assessments. While these agencies require financial stability to meet increasing demands, a rise in Proposition 218 litigation is making it increasingly difficult to ensure agencies can pass fair and reasonable rates to cover the costs of operations and investments. Oftentimes, these suits are filed without first having raised concerns with the public agency during the public notice-and-comment process leading up to the decision to adopt rates or assessment. When litigants avoid raising concerns with proposed rates or assessments during the ratemaking process, the public agencies cannot endeavor to resolve the dispute and avoid litigation. The financial consequences of these lawsuits can be severe, as it is not uncommon for litigants to seek tens of millions of dollars in damages. Surprise lawsuits have the potential to undermine an agency’s ability to maintain stable budgets necessary to operate effectively.

“...AB 2257 would bolster the financial stability of public water and sewer agencies by creating a clear and robust public process that facilitates dialogue, transparency, and the opportunity to resolve issues and avoid costly litigation. Codifying a procedure that requires issue exhaustion in Proposition 218 litigation would protect both legislative and adjudicative functions by allowing a legislative body to hear the evidence, apply its reasoned discretion and expertise, and create an administrative record to facilitate judicial review. This would also foster better-informed administrative decisions, which benefit the objector, the public agency, and members of the public within the public agency’s jurisdiction. This is especially valuable in ratemaking cases in which evidence and policies are highly technical. It would also help agencies develop more defensible rates and build rapport and trust with their ratepayers.”

- 8) **Arguments in Opposition.** According to the Howard Jarvis Taxpayers Association and a coalition in opposition to a prior version of this bill, “The protest procedure set forth in this bill is separate from the notice required by Proposition 218 and appears merely to layer on additional – and superfluous – requirements for the sole purpose of hindering taxpayers’ constitutional ability to approve or reject taxes. For example, under this bill, if the agency posts on its website and ‘makes available to the public’ the proposed fee/assessment and a ‘written basis’ three months prior to a public hearing, the 45-day deadline will have passed by the time Proposition 218 notices are even mailed.

“It is also questionable what constitutes a ‘written basis’ for proposed charges. Nothing in this bill suggests an engineer’s report, or any other documentation that would allow a ratepayer to infer the charges might be invalid, will be required. How are they supposed to determine, even theoretically, what might be wrong with the proposed rates in the absence of a detailed analysis? Further, 45 days is an unreasonably short period of time for: (1) a customer to schedule a consultation with an attorney; (2) the attorney to research whether there is a violation; (3) the attorney to find and retain an expert witness; (4) the expert to prepare a report; and (5) the attorney to draft and submit a thorough objection preserving all legal theories. Not to mention the cost of such an undertaking. To add insult to injury, Section 1 of AB 2257 proclaims that these requirements are ‘consistent with the intent of Proposition 218.’ As the principal drafter of Prop. 218, I can assure you, it isn’t. The reality is additional byzantine remedies are an intentional trap for the inexperienced. At what point do these obstacles become a due process violation?”

- 9) **Double-Referral.** This bill was double-referred to the Assembly Judiciary Committee, where it passed on 7-1 vote on March 19, 2024.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Association of California Water Agencies (ACWA) [SPONSOR]  
Alta Irrigation District  
Bella Vista Water District  
Brooktrails Township Community Services District  
California Alliance for Jobs  
California Council for Environmental & Economic Balance (CCEEB)  
California Municipal Utilities Association (CMUA)  
California Special Districts Association  
California State Association of Counties  
Calleguas Municipal Water District  
Camrosa Water District  
City of Rancho Cucamonga  
City of Santa Rosa  
Coastside County Water District  
Contra Costa Water District  
Crescenta Water District  
Crestline-Lake Arrowhead Water Agency  
Cucamonga Valley Water District  
Diablo Water District  
Dublin San Ramon Services District  
Eastern Municipal Water District  
Environmental Defense Fund  
Fallbrook Public Utilities District  
Florin Resource Conservation District/Elk Grove Water District  
Georgetown Divide Public Utility District  
Helix Water District  
Hidden Valley Lake Community Services District  
Irvine Ranch Water District  
Las Virgenes Municipal Water District  
McKinleyville Community Services District  
McMullin Area Groundwater Sustainability Agency  
Mendocino County Russian River Flood Control & Water Conservation  
Mid-Peninsula Water District  
Monte Vista Water District  
Montecito Water District  
Nevada Irrigation District  
Olivenhain Municipal Water District  
Padre Dam Municipal Water District  
Placer County Water Agency  
Rosedale-Rio Bravo Water Storage District

San Bernardino Valley Water Conservation District  
San Diego County Water Authority  
San Gabriel Valley Water Association  
San Juan Water District  
Santa Clara Valley Water District  
Santa Clarita Valley Water Agency  
South San Joaquin Irrigation District  
Stockton East Water District  
Sweetwater Authority  
Tahoe City Public Utility District  
Three Valleys Municipal Water District  
Town of Hillsborough  
Tri-County Water Authority  
Upper San Gabriel Valley Municipal Water District  
Valley Center Municipal Water District  
Valley Sanitary District  
Walnut Valley Water District  
Western Municipal Water District

**Opposition**

Apartment Owners Association of California,  
California Taxpayer Protection Committee  
California Taxpayers Association  
Central Coast Taxpayers Association  
Central Valley Taxpayers Association  
Howard Jarvis Taxpayers Association (HJTA)  
Los Angeles County Taxpayers Association  
Placer County Taxpayers Association  
San Diego Tax Fighters  
Silicon Valley Taxpayers Association  
Solano County Taxpayers Association  
Western Manufactured Housing Communities Association

**Concerns**

California Farm Bureau Federation

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