

Date of Hearing: April 20, 2016

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Susan Talamantes Eggman, Chair

AB 2801 (Gallagher) – As Amended April 4, 2016

SUBJECT: Local government: fees and charges: written protest.

SUMMARY: Imposes requirements on local governments, when conducting protest proceedings for property-related fees, pursuant to Proposition 218. Specifically, **this bill:**

- 1) Imposes additional requirements on local governments (used interchangeably with 'agency'), when conducting protest proceedings to impose or increase property-related fees or charges.
- 2) Prohibits a local agency from requiring a written protest to include any identification of the property other than the street address, unless the property does not have a street address.
- 3) Prohibits a local agency from requiring a written protest to be submitted on a form provided by the agency.
- 4) Requires the agency to keep any written protest it receives securely stored and sealed until the public hearing at which time it may be opened and counted pursuant to existing law.
- 5) Requires the agency to maintain all written protests for a minimum of two years.
- 6) Provides that a written protest is a public record, pursuant to the definition of public records contained in the California Public Records Act (PRA), and requires that a written protest is subject to the provisions of the PRA.
- 7) Requires notwithstanding 6), above, written protests to remain confidential, and prohibits written protests from being disclosed, pursuant to state law including, but not limited to, PRA, until they have been opened for counting at a public hearing.
- 8) Makes several findings and declarations.
- 9) Provides that no reimbursement is required, pursuant to the California Constitution, which exempts the state from reimbursing local agencies for costs related to complying with the PRA and the Ralph M. Brown Act (Brown Act), as specified.

EXISTING LAW:

- 1) Provides notice, protest, and hearing procedures for the levying of new or increased assessments or property-related fees or charges by local government agencies, pursuant to Proposition 218.
- 2) Defines "agency" to mean any local government, including a county, city, city and county, including a charter city or county, any special district, or any other local regional governmental entity.

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

- 1) **Proposition 218.** Article XIII D of the California Constitution [Proposition 218, 1996] distinguishes among taxes, assessments and fees for property-related revenues, and requires certain actions before such revenues may be collected. Counties and other local agencies with police powers may impose any one of these options on property owners, after completing the Proposition 218 process. Special districts created by statute, however, must have specific authority for each of these revenue sources.

The Constitution defines a fee (or charge) as any levy other than an ad valorem tax, special tax, or assessment that is imposed by a local government on a parcel or on a person as an incident of property ownership, including a user fee for a property-related service. The fee imposed on any parcel or person cannot exceed the proportional cost of the service that is attributable to the parcel. Additionally, a property-related fee cannot be imposed for general governmental services like police, fire, and library services. Prior to imposing or increasing a property-related fee, the local government is required to identify the parcels, mail a written notice to all the property owners subject to the fee detailing the amount of the fee, the reason for the fee, and the date, time, and location of a public hearing on the proposed fee. No sooner than 45 days after mailing the notice to property owners, the agency must conduct a public hearing on the proposed fee. If a majority of owners of the identified parcels provide written protests against the fee, it cannot be imposed or increased by the agency. One written protest per parcel, filed by an owner or tenant of the parcel, is counted in order to calculate the majority protest. Additionally, the California Constitution specifies election requirements, except for fees or charges for sewer, water, and refuse collection services.

- 2) **Bill Summary.** This bill establishes several requirements for the protest proceedings for property-related fees conducted by local agencies. This bill would prohibit a local agency from requiring written protest to be submitted on a form provided by the agency. Additionally a local agency would be prohibited from requiring written protest to include any information about the property, except for a street address. Written protests would have to be sealed and securely stored until they can be opened and counted at a public hearing. This bill specifies that written protest must be kept for two years and is a public record, pursuant to the PRA. This bill provides no reimbursement to local agencies, pursuant to the California Constitution, which exempts the state from reimbursing local agencies for costs related to complying with the PRA and the Brown Act. This bill is sponsored by the Howard Jarvis Taxpayers Association.
- 3) **Prior Legislation.** AB 1260 (Caballero), Chapter 280, Statutes of 2007, clarified how a public agency may provide notice when proposing a new, or increasing an existing property-related fee. AB 2218 (Gaines) of 2008, held on the Senate Appropriations Suspense File, would have imposed new restrictions on local governments, when conducting property-related fee and assessment ballot proceedings, pursuant to Proposition 218. SB 321 (Benoit), Chapter 580, Statutes of 2009, imposed additional requirements on local governments when conducting assessment ballot proceedings, pursuant to Proposition 218.

SB 553 (Yee), Chapter 215, Statutes of 2013, applied many of the requirements in current law for assessment ballot procedures to the elections for property-related fees submitted to property owners. For example, SB 553 required specified information to be printed on the ballot and established requirements for ballot tabulation, including that the ballots are

tabulated in a location accessible to the public and by an impartial person with no vested interest in the outcome.

- 4) **Author's Statement.** According to the author, "AB 2801 adds needed transparency to the fee protest procedure first implemented by Proposition 218, which voters approved in 1996. Proposition 218 provides a streamlined protest procedure in place of an election when local agencies propose increases in water, sewer, or refuse collection rates. The agency must mail a specified notice to affected ratepayers and allow them at least 45 days before the hearing on the increase to submit written protests. If a majority of the ratepayers submit timely written protests, the rate increase is tabled. To ensure that ratepayers are not disenfranchised, uniform standards should be adopted across California for how protest notices should be accepted and retained.

"Over the nearly 20 years that Proposition 218 has been in place, there have been a number of inconsistencies regarding how to record and tabulate protest procedures. Included among these are complaints about agencies opening protests before the hearing, unjustifiably disqualifying protests, and erecting unnecessary procedural hurdles to discourage protests.

"In recent years the Legislature has enacted standards for fair and transparent assessment and fee elections. SB 1477 (Lewis, of 2000), which related to assessment elections, and SB 553 (Yee, of 2013), which related to fee elections, increased public confidence in the process and the declared outcome of these elections by requiring, for example, that ballots must remain sealed until the public hearing, must be tabulated in public view by a disinterested person, become disclosable public records after the hearing, and needed to be maintained for a minimum of two years. Both SB 1477 and SB 553 (an HJTA sponsored bill) were approved on a wide bi-partisan basis. In the same manner, the procedure for fee protests should be fair and transparent.

"AB 2801 similarly requires the local agency to keep protests securely stored and sealed until the public hearing and makes them disclosable public records after the hearing. The bill states that a protest in order to be valid doesn't need to be on a form provided by the public agency, and also that a protest doesn't need to include any identifying information beyond a street address. This bill doesn't mandate new responsibilities or requirements upon local agencies; it simply broadens and makes more inclusive the process regarding how to protest a rate increase."

- 5) **Committee Amendments.** The Committee may wish to ask the author to strike out all of the provisions in the bill with the exception of the requirement that local agencies maintain written protests for a minimum of two years. This requirement is consistent with current law for ballots in property-related fee elections. Additionally, the Committee may wish to clarify that the two-year period begins on the date of the hearing which protest is considered. The Committee may wish to ask the author to remove all other provisions of the bill in light of the following:

- a) **Consistency.** Proponents of this bill state that there are inconsistencies with local agencies recording and tabulating protest procedures. The Committee may wish to consider if this bill prohibits locals from providing a standardized form that must be used for written protest if it will in fact result in less uniformity.

Additionally, the Committee may wish to consider how local agencies can keep written protests "securely stored and sealed" when this bill prohibits them from providing a specific form. Opposition notes that local agencies may receive written protests in multiple formats, including, e-mails, faxes, postcards, handwritten notes, unmarked envelopes, or included with a bill payment. The Committee may wish to consider the practical challenges for local agencies in complying with the seemingly inconsistent requirements and prohibitions established by this bill.

- b) **Hearing.** In December 2015, the City of Milpitas received 2,046 written protests, short of the 9,100 necessary for a majority protest. The Committee may wish to consider the practicality of requiring a local agency to count and verify all written protests in a hearing. Additionally, opposition notes that some local agencies include written protests in an agenda packet so the governing board and public can see the number of protests and any comments for consideration at the hearing, which also allows members of the public to verify their protest has been received. The Committee may wish to consider that this bill would prohibit that practice, which some may argue makes the protest process more transparent.
 - c) **Parcels.** Opposition argues that because the protest process is based on parcels, a local agency might require a parcel number to ensure that they only count one protest per parcel. Parcels may have multiple street addresses with the same parcel number; therefore, allowing a local agency to require a parcel number ensures a fair and efficient process. The Committee may wish to consider if prohibiting a local agency from requiring specified information on a written protest will be contrary to the stated goal of the bill to provide a more fair and consistent process.
- 6) **Arguments in Support.** The Howard Jarvis Taxpayers Association (HJTA) argues, "AB 2801 will provide much needed transparency to the protest notice process. Earlier this year, HJTA heard from an individual in Fresno County who wanted to review protests from a recent rate increase proposal, only to find that he could not because the protests were not disclosable public records. As with any process regarding taxpayer dollars, ratepayers deserve to have as much access as is reasonably prudent. Certainly, allowing concerned citizens to review protests is not burdensome. AB 2801 mirrors earlier proposals that extended this necessary transparency across all forms of local government exactions."
- 7) **Arguments in Opposition.** The California State Association of Counties argues, "At the present we are unaware of a pervasive problem with existing local practices. We are eager to learn of incidents where the existing written protest submission or review procedure did not meet the needs of the property owners..." The California Special Districts Association argues, "The piecemeal approach contained in AB 2801 will create new questions regarding implementation and will be difficult for local agencies to implement. Each public agency establishes a written protest process be designated to meet the needs of the local community."

REGISTERED SUPPORT / OPPOSITION:

Support

Howard Jarvis Taxpayers Association [SPONSOR]

Opposition

California Special Districts Association
California State Association of Counties (unless amended)

Analysis Prepared by: Misa Lennox / L. GOV. / (916) 319-3958