

Date of Hearing: June 8, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

SB 656 (Eggman) – As Amended April 13, 2021

SENATE VOTE: 32-0

SUBJECT: Stockton-East Water District: water rates.

SUMMARY: Allows Stockton East Water District (SEWD) to exceed specified water rate caps if the rates are adopted in accordance with existing law. Specifically, **this bill:**

- 1) Authorizes SEWD to exceed certain surface water rate and groundwater assessment caps, so long as it does so in accordance with existing law.
- 2) Repeals the ability for SEWD voters to remove the rate caps if a majority approve a contract for new supplemental water or approve bonds for financing a distribution system for new supplemental water to conform to 1) above.
- 3) Makes other technical, conforming changes.

EXISTING LAW:

- 1) Caps property tax rates at 1% of assessed value (which only changes upon new construction or when ownership changes) and requires 2/3 voter approval for special taxes.
- 2) Requires majority voter approval of general taxes.
- 3) Requires that 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.
- 4) Prohibits local governments from imposing 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.
- 5) Exempts water, sewer, and refuse collection services from Proposition 218’s voter-approval requirements, but these charges must meet all other procedural and substantive requirements in Proposition 218.
- 6) Specifies that the definition of taxes that require voter approval includes any tax, charge, or exaction a local government imposes (Proposition 26, 2010), Importantly, with some key exceptions, including for charges that are no more than the reasonable costs of providing a service and that bear a “fair or reasonable” relationship to the benefit the payor receives.
- 7) Creates SEWD as a water conservation district responsible for providing water for both agricultural and urban uses.

- 8) Requires SEWD board to hold a public hearing each spring to consider the necessity, amount, and rate of a municipal groundwater assessment, an agricultural groundwater assessment, a domestic groundwater assessment, and charges for surface water to the extent such charges are not controlled by contract or agreement. Following the hearing, and prior to April 15, the board may adopt an ordinance to determine, levy, and assess these fees and charges.

FISCAL EFFECT: None.

COMMENTS:

- 1) **Bill Summary and Author's Statement.** This bill allows SEWD to exceed their surface water rate and groundwater assessment caps, so long as it does so in accordance with existing law. The measure also repeals the ability for district voters to remove the rate caps if a majority approve contracts or bonds for supplemental water to conform to the rate caps' removal. SEWD is the sponsor of this bill.

According to the author, "In order to meet our SGMA goals, and bring severely overdrafted ground water basins up to sustainable levels, it is imperative that we use every tool available. The Central Valley has the highest concentration of high-priority basins in the state, and with the state entering another drought period, it is vital that the Eastern San Joaquin Groundwater Basin achieve sustainability in a timely manner. By making surface water and groundwater prices competitive, we can incentivize a transition away from a reliance on a limited groundwater supply to readily available surface water."

- 2) **Post Proposition 13.** A series of propositions have drastically cut into local revenue sources, requiring local governments to look elsewhere to fund services that the public demands. First, Proposition 13 (1978) capped property tax rates at 1% of assessed value (which only changes upon new construction or when ownership changes) and required 2/3 voter approval for special taxes; as a result local governments turned to general taxes to avoid the higher voter threshold. When Proposition 62 (1986) required majority voter approval of general taxes, local agencies imposed assessments that were more closely tied to the benefit that an individual property owner receives. Subsequently, Proposition 218 (1996) required voter approval of parcel taxes, assessments, and property-related fees. In response to the reduction in property tax revenues from Proposition 13 and the difficulty of raising taxes, local agencies have turned to other sources of funds for general operations.
- 3) **Proposition 218.** The California Constitution requires voter approval for taxes and many other fees and charges. Proposition 218 (1996) added Article XIID to the California Constitution, which 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.

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.

- 4) **Assessments.** Not everyone benefits from all of the services or facilities that a local government provides. When a specific project or particular service benefits only a well-defined group of property owners, public policy generally attempts to assign the costs of services and facilities to those who receive the benefits. Articles XIII C and XIII D of the California Constitution allow for the imposition of "benefit assessments" for precisely this purpose. The amount of the assessment must be directly related to the amount of the benefit that the property receives. Benefit assessments can finance public projects like flood control, street improvement, streetlights, and public landscaping, among many others.

With the passage of Proposition 218, assessments became more difficult to impose because it required property owners to approve any new assessments. In general, Proposition 218 curbed the use of property-related charges to pay for general governmental services. In 2010, voters approved Proposition 26, which broadened the definition of taxes that require voter approval to include any tax, charge, or exaction a local government imposes. Importantly, the measure provided some key exceptions, including for charges that are no more than the reasonable costs of providing a service and that bear a "fair or reasonable" relationship to the benefit the payor receives.

In *City of San Buenaventura v. United Water Conservation Dist.*, 3 Cal. 5th 1191, the California Supreme Court clarified that assessments strictly for the use of a service do not require local agencies to go through the Proposition 218 voter approval or protest requirements, provided they meet Proposition 26's rules for reasonableness, so any procedural requirements for these rates are generally provided by statute.

- 5) **Sustainable Groundwater Management Act.** In response to a multi-year drought, the Legislature enacted the Sustainable Groundwater Management Act (SGMA) in 2014 which was composed of three bills, including AB 1739 (Dickinson), Chapter 347, Statutes of 2014; SB 1168 (Pavley), Chapter 346, Statutes of 2014; and SB 1319 (Pavley), Chapter 348,

Statutes of 2014. SGMA comprehensively reformed California’s groundwater laws. Among other provisions, SGMA directs the Department of Water Resources (DWR) to categorize the state’s groundwater basins into high, medium, low, and very low priorities, based on factors such as the population overlying the basin, number of wells in the basin, and overlying irrigated acreage. DWR must also identify basins subject to critical overdraft—where more water is consistently being removed than replaced.

Under SGMA, basins designated as high or medium priority must be managed by a groundwater sustainability agency (GSA). That agency must develop a groundwater sustainability plan (GSP) to ensure that by 2040, the basin is in a sustainable condition—there can be no “undesirable results” from use of the basin. If a basin does not have a GSA or the agency fails to adopt or implement a GSP, the State Water Resources Control Board may designate the basin as “probationary” and can develop its own plan to achieve sustainability for the basin. The deadlines for GSAs to adopt their plans vary by basin: high and medium priority basins in critical overdraft were required to adopt a plan by January 31, 2020; other high and medium priority basins had until January 31, 2022.

- 6) **Stockton East Water District.** State law tasks numerous types of local agencies with sustainably managing groundwater supplies in basins throughout the state. Some of these agencies are governed under generally-applicable principal acts that allow the creation of multiple types of agencies that have similar forms and functions. In other cases, the Legislature created individual agencies through special acts, including water conservation districts. Water conservation districts provide a variety of services to protect and sustain water supplies throughout the state.

SEWD is a water conservation district responsible for providing surface water for both agricultural and urban uses, and supplies wholesale treated surface water, which is sold to Stockton area customers by the California Water Service Company, the City of Stockton, and San Joaquin County. Initially formed under the Water Conservation District Law of 1931 in 1948, the Legislature has made various changes to the district’s act over time. It serves an area with over 350,000 residents and over 143,000 acres in San Joaquin County.

SEWD’s governing board adopts policies and regulations, and sets water rates. A seven-member board of directors governs SEWD, each representing one division of the district’s territory. SEWD receives most of its revenues from three sources:

- a) Property taxes.
- b) Surface water and groundwater charges and assessments for agricultural customers.
- c) Contract sales of surface water and groundwater for municipal customers.

SB 1120 (Garamendi), Chapter 1126, Statutes of 1979, made numerous changes to the governance of SEWD, including capping the current assessment rates for the district as follows:

- a) Domestic groundwater assessment rate: \$10 per domestic use unit as established by the board.

- b) Stream-delivered (or surface) water rate: \$7.60 per acre-foot of water.
- c) Agricultural groundwater assessment rate: \$1.16 per acre-foot of water.
- d) Municipal groundwater assessment rate: \$3 per acre-foot of water.

SB 1120 allowed a one-time 20% increase for groundwater assessments and surface water charges and an annual inflation factor based on the federal Consumer Price Index. Existing law also permits voters to remove the rate cap after a successful election by SEWD voters to approve a contract for new supplemental water or approve bonds to finance a distribution system for new supplemental water.

According to SEWD, the inflation-adjusted cap reduces the incentives to use surface water over groundwater and comply with SGMA's requirements. Specifically, "the Groundwater Sustainability Plan submitted to the Department of Water Resources for the Eastern San Joaquin Groundwater Basin identifies a need for an additional 70,000 acre feet of surface water in order for the basin to be sustainable. There is more than 70,000 acre feet of surface water available annually in the basin in most years; what is needed is the ability to utilize that surface water either through in-lieu or active recharge. In particular, Stockton East has approximately 40,000 acre feet available in most years. Stockton East believes the best way to utilize this water is through in-lieu irrigation water use."

- 7) **Arguments in Support.** According to the sponsors of this bill, SEWD, this bill, "would remove a cap on rates for the Stockton East Water District (District) and would allow the District to raise revenues to comply with the Sustainable Groundwater Management Act (SGMA).

"SB 656 proposes to remove a legislative rate cap imposed solely upon agricultural rates in 1971. The legislation does not affect any other rates within the District, and would not make any changes to municipal rates. Importantly, any rate increases would be required to comply with California Law, including Proposition 218 and 26.

"While virtually every other agricultural related Special District within the State of California has the ability to lawfully raise its groundwater extraction rates in compliance with State laws, our District is currently prohibited from doing so by archaic provisions in the legislation governing its operations. Such restrictions render the District unable to implement projects needed to achieve sustainability. We support SB 656 which would give our District's Board of Directors the ability to manage their organization appropriately and in compliance with SGMA for the benefit of the Eastern San Joaquin Groundwater Basin."

- 8) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

Stockton East Water District [SPONSOR]
California Special Districts Association
Central San Joaquin Water Conservation District
North San Joaquin Water Conservation District
Oakdale Irrigation District
San Joaquin County
South Delta Water Agency
South San Joaquin Irrigation District

Opposition

None on file

Analysis Prepared by: Jimmy MacDonald / L. GOV. / (916) 319-3958