

No. S172199

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

FORD GREENE,
Plaintiff and Appellant,

vs.

MARIN COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT,

Defendant and Respondent,

SUPREME COURT
FILED

JUL 27 2009

Frederick K. O'Connell
Deputy
[Signature]

FRIENDS OF CORTE MADERA CREEK WATERSHED AND FLOOD
MITIGATION LEAGUE OF ROSS VALLEY,

Intervenors and Respondents.

Review of Decision of the Court of Appeal for the First Appellate District
(Case No. A120228)

Superior Court for the County of Marin
The Honorable M. Lynn Duryee, Judge Presiding
(Marin County Superior Court Case No. CV 073767)

NOTICE OF MOTION AND MOTION FOR JUDICIAL NOTICE

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Marin County Flood Control and Water Conservation District

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**Attorneys for Defendant and Respondent,
Marin County Flood Control and Water Conservation District**

*To the Honorable Chief Justice and Associate Justices of the
Supreme Court of the State of California:*

Please take notice that, pursuant to California Rules of Court, Rules 8.520(g) and 8.252(a), and California Evidence Code sections 452(b) and (h), and 459, Respondent Marin County Flood Control and Water Conservation District hereby moves this Court to take judicial notice of the following true and correct documents, which are attached hereto as Exhibits A, B, C, and D to the Declaration of Erwin M. Benedicto:

A. Proposition 218 Ballot Materials: (1) Official Title and Summary Prepared by the Attorney General: “VOTER APPROVAL FOR LOCAL GOVERNMENT TAXES. LIMITATIONS OF FEES, ASSESSMENTS, AND CHARGES. INITIATIVE CONSTITUTIONAL AMENDMENT”; (2) Impartial Analysis by the Legislative Analyst titled “Proposition Number 218 Voter Approval for Local Government Taxes. Limitations on Fees, Assessments, and Charges. Initiative Constitutional Amendment;” and (3) Ballot Arguments in Favor and Against Proposition 218 (Proposition 218, 1996).

B. Annotated Version of Proposition 218, prepared by the Howard Jarvis Taxpayers Association. (December 6, 1996).

C. The procedural history of Senate Bill 919 from the Senate Weekly History. (January 29, 1998).


D. Analysis of Senate Bill 919 prepared by the Office of Senate Floor Analysis, titled "Unfinished Business." (June 30, 1997)

This motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities and Declaration of Erwin M. Benedicto, and Exhibits A, B, C and D attached thereto, and the complete records and files of this Court, and the accompanying [proposed] order granting this motion.

DATED: July 24, 2009

Respectfully submitted,

COLANTUONO & LEVIN, P.C.

By: 
Erwin M. Benedicto
Attorneys for Respondent
Marin County Flood Control and Water
Conservation District

MEMORANDUM OF POINTS AND AUTHORITIES

I. THE SUPREME COURT SHOULD TAKE JUDICIAL NOTICE AS REQUESTED

A. General Principles of Judicial Notice

Judicial notice may be taken of “[r]egulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States.” (Cal. Evid. Code § 452(b).) Judicial notice also may be taken of “facts . . . that are not reasonably subject to dispute.” (*Id.*, subd. (h).) Judicial notice of such facts are mandatory upon request where the opposing party is permitted to raise objections and the court has enough information about the facts in order to make a determination that they come within a category subject to proper judicial notice. (Cal. Evid. Code § 453(b).) A reviewing court is permitted to judicially notice facts in the same manner as a trial court. (Cal. Evid. Code § 459(a).)

“Judicial notice is the recognition and acceptance by the court, for use . . . by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter.” (*Lockley v. Law Office of Cantrell, Green, et al.* (2001) 91 Cal.App.4th 875, 882 (citations and quotations omitted). “The underlying theory of judicial notice is that the matter being judicially noticed is a law or fact that is *not reasonably subject to dispute.*” (*Id.*; Cal. Evid. Code § 452(h)).

B. The Court Should Take Judicial Notice of the Ballot Materials Regarding Proposition 218

The Court should judicially notice the documents in Exhibit A. The contents of this document constitute legislative history of Articles XIII C and XIII D, the provisions of which are in issue in this appeal, and may be judicially noticed pursuant to Evidence Code sections 452(b) and (h). Further, the contents of the ballot materials regarding Proposition 218 are facts not reasonably subject to dispute, and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. *Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 903 (ballot pamphlets constitute legislative history and are appropriate for judicial notice); *In re Lance W.* (1985) 37 Cal.3d 873, 888, fn. 8 (“Ballot summaries and arguments are accepted sources from which to ascertain the voters’ intent and understanding of initiative measures”); *Garfinkle v. Superior Court* (1978) 21 Cal.3d 268, 282, fn. 19 (relying on Legislative Analyst’s evaluation to determine voters’ intent); *Souza v. Westlands Water Dist.* (2006) 135 Cal.App.4th 879 (judicial notice of water district notice to landowners).

This exhibit is relevant to this appeal which concerns the meaning of California Constitution, article XIII D, section 6(c) as more fully explained in the District’s Opening Brief.

The Proposition 218 ballot materials were not provided to the trial court for judicial notice. On March 27, 2009 Respondent requested that the Court of Appeal take judicial notice of the Official Title and Summary Prepared by the Attorney General contained in Exhibit A in conjunction with its Petition for Rehearing. However, on April 7, 2009, the Court of Appeal declined Respondent's request for judicial notice and denied rehearing.

The remaining documents contained in Exhibit A were included in Exhibit 15 to Plaintiff Ford Greene's ("Greene") December 15, 2008 request for judicial notice. On March 4, 2009, the Court of Appeal granted that request for judicial notice.

C. The Court Should Take Judicial Notice of the Annotated Version of Proposition 218

The Court should judicially notice the document in Exhibit B. The contents of this document constitute evidence of the legislative history of Proposition 218 as an expression of the intent of one of its proponents that was circulated during the campaign on the measure and played some role in informing the electorate which adopted the measure. Such legislative history may be judicially noticed pursuant to Evidence Code sections 452(b) and (h). *Quintano v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1062, fn. 5; *People v. Watie* (2002) 100 Cal.App.4th 866, 884; *San Rafael*

Elementary School Dist. v. State Bd. of Education (1999) 73 Cal.App.4th 1018, 1025, fn. 8. The contents of the Annotated Version of Proposition 218 are facts not reasonably subject to dispute, and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

The Annotated Version of Proposition 218 prepared by the Howard Jarvis Taxpayers Association (“HJTA”) is relevant to this matter because HJTA drafted Proposition 218. *Apartment Ass’n of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, 839 (noting that the HJTA drafted Proposition 218). Also, HJTA’s intent has some bearing on the interpretation of Proposition 218. *Carman v. Alvord* (1982) 31 Cal.3d 318, 331, n. 10 (recognizing portions of letter from the late Howard Jarvis constituted an “after-the-fact” declaration of the intent of Proposition 13 and thus deserved some consideration given that Mr. Jarvis was a proponent of the measure). This exhibit sheds some light on the meaning of California Constitution, article XIII D, section 6(c) as explained more fully explained in the District’s Opening Brief.

Exhibit B was not presented to the trial court for judicial notice. On March 27, 2009 the District requested that the Court of Appeal take judicial notice of Exhibit B in conjunction with its petition for rehearing. However, on April 7, 2009, the Court of Appeal declined Respondent’s request for judicial notice and denied rehearing.

**D. The Court Should Take Judicial Notice of the Procedural
History of the Proposition 218 Omnibus Implementation
Act**

The Court should judicially notice the documents in Exhibits C and D. These documents are elements of the legislative history of the Proposition 219 Omnibus Implementation Act of 1997, Government Code Sections 53750 et seq., and may assist this Court in interpreting the meaning of Proposition 218 as understood by the Legislature and then-Governor Wilson who approved this urgency legislation to aid in implementing the new measure immediately following its approval by California voters at the November 1996 election. Legislative history materials may be judicially noticed pursuant to Evidence Code sections 452(b) and (h). *Quintano v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1062, fn. 5; *People v. Watie* (2002) 100 Cal.App.4th 866, 884; *San Rafael Elementary School Dist. v. State Bd. of Education* (1999) 73 Cal.App.4th 1018, 1025, fn. 8; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1135, fn. 1. *In re J.W.* (2002) 29 Cal.4th 200, 211 (Senate and Assembly committees analyses); see also *People v. Cruz* (1996) 13 Cal.4th 764, 773, fn. 5; *Hutnick v. United States Fidelity & Guaranty Co.* (1988) 47 Cal.3d 456, 465, fn. 7.

The procedural history of this statute is not reasonably subject to dispute, and may be immediately and accurately determined by resort to sources of reasonably indisputable accuracy. These exhibits are relevant to the meaning of California Constitution, article XIII D, section 6(c) as explained more fully explained in the District's Opening brief.

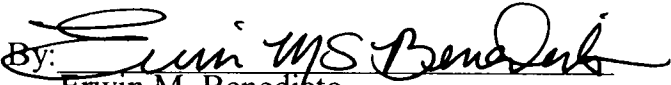
Exhibit C, the procedural history of Senate Bill 919 from the Senate Weekly History, and Exhibit D, the Senate Floor Analysis of Senate Bill 919 titled “Unfinished Business,” were not presented to the trial court for judicial notice. On December 15, 2008 Appellant filed a request for judicial notice in the Court of Appeal. A copy of Exhibit C was attached as Exhibit 6 to Greene’s December 15, 2008 request for judicial notice and Exhibit D was attached as Exhibit 11 to that request. On March 4, 2009, the Court of Appeal granted those requests for judicial notice.

II. CONCLUSION

The District respectfully requests that this Court grant the District’s motion to judicially notice the attached materials and consider them in support of the District’s Opening Brief, filed concurrently herewith.

DATED: July 24, 2009

Respectfully submitted,
COLANTUONO & LEVIN, PC

By: 
Erwin M. Benedicto
Attorneys for Respondent
Marin County Flood Control and Water
Conservation District

DECLARATION OF ERWIN M. BENEDICTO

[CRC 8.54(a)(2)]

1. I am an attorney licensed to practice before the Courts of this state, and an associate at Colantuono & Levin, PC, one of the attorneys of record for Respondent Marin County Flood Control and Water Conservation District in this appeal. I make the following statement of facts based upon personal knowledge and if called to testify as to them, could and would do so competently.

2. Attached hereto as Exhibit A is a true and correct copy of the Proposition 218 Ballot Materials: (1) Official Title and Summary Prepared by the Attorney General: “VOTER APPROVAL FOR LOCAL GOVERNMENT TAXES. LIMITATIONS OF FEES, ASSESSMENTS, AND CHARGES. INITIATIVE CONSTITUTIONAL AMENDMENT”; (2) Impartial Analysis by the Legislative Analyst titled “Proposition Number 218 Voter Approval for Local Government Taxes. Limitations on Fees, Assessments, and Charges. Initiative Constitutional Amendment”; and (3) Ballot Arguments in Favor and Against Proposition 218.

3. Attached hereto as Exhibit B is a true and correct copy of the Annotated Version of Proposition 218, prepared by the Howard Jarvis Taxpayers Association.

4. Attached hereto as Exhibit C is a true and correct copy of the procedural history of Senate Bill 919 from the Senate Weekly History dated January 29, 1998.

5. Attached hereto as Exhibit D is a true and correct copy of the Analysis of Senate Bill 919 prepared by the Office of Senate Floor Analysis on or around June 30, 1997, titled "Unfinished Business."

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct. Executed on this, the 24th day of July 2009, at Los Angeles, California.

By: 
Erwin M. Benedicto

[Proposed]

**ORDER TAKING JUDICIAL NOTICE OF
REGULATIONS AND LEGISLATIVE ACTIONS**

Good cause appearing, IT IS HEREBY ORDERED that Respondent Marin County Flood Control and Water Conservation District's Motion Requesting Judicial Notice is granted. IT IS ORDERED that this Court shall take judicial notice of the following:

1. Proposition 218 Ballot Materials: (1) Official Title and Summary Prepared by the Attorney General titled "VOTER APPROVAL FOR LOCAL GOVERNMENT TAXES. LIMITATIONS OF FEES, ASSESSMENTS, AND CHARGES. INITIATIVE CONSTITUTIONAL AMENDMENT"; (2) Impartial Analysis by the Legislative Analyst titled "Proposition Number 218 Voter Approval for Local Government Taxes. Limitations on Fees, Assessments, and Charges. Initiative Constitutional Amendment"; and (3) Ballot Arguments in Favor and Against Proposition 218. (Proposition 218, 1996).
2. Annotated Version of Proposition 218, prepared by the Howard Jarvis Taxpayers Association. (December 6, 1996).
3. The procedural history of Senate Bill 919 from the Senate Weekly History. (January 29, 1998).

4. Analysis of Senate Bill 919 prepared by the Office of Senate Floor Analysis, titled "Unfinished Business." (June 30, 1997)

Dated: _____

Ronald M. George
Chief Justice

EXHIBIT A



**Voter Approval for Local Government Taxes.
Limitations on Fees, Assessments, and Charges.
Initiative Constitutional Amendment.**

Official Title and Summary Prepared by the Attorney General

**VOTER APPROVAL FOR LOCAL GOVERNMENT TAXES.
LIMITATIONS ON FEES, ASSESSMENTS, AND CHARGES.
INITIATIVE CONSTITUTIONAL AMENDMENT.**

- Limits authority of local governments to impose taxes and property-related assessments, fees, and charges. Requires majority of voters approve increases in general taxes and reiterates that two-thirds must approve special tax.
- Assessments, fees, and charges must be submitted to property owners for approval or rejection, after notice and public hearing.
- Assessments are limited to the special benefit conferred.
- Fees and charges are limited to the cost of providing the service and may not be imposed for general governmental services available to the public.

**Summary of Legislative Analyst's
Estimate of Net State and Local Government Fiscal Impact:**

- Short-term local government revenue losses of more than \$100 million annually.
 - Long-term local government revenue losses of potentially hundreds of millions of dollars annually.
 - Local government revenue losses generally would result in comparable reductions in spending for local public services.
-



Proposition Number 218

Voter Approval for Local Government Taxes. Limitations on Fees, Assessments, and Charges. Initiative Constitutional Amendment

Overview

Local governments provide many services to people and businesses in their communities. To pay for these services, local governments raise revenues by imposing fees, assessments, and taxes. This constitutional measure would make more difficult for local governments to raise these revenues. As a result, this measure would:

Reduce the amount of fees, assessments, and taxes that individuals and businesses pay.

Decrease spending for local public services.

Proposal

This measure would constrain local governments' ability to impose fees, assessments, and taxes. The measure would apply to all cities, counties, special districts, redevelopment agencies, and school districts in California.

Fees

Current Practice. Local governments charge fees to pay for many services to their residents. Some of these fees pay for services to property, such as garbage collection and sewer service. Fees are also called "charges."

Local governments often establish several fee amounts for a service, each based on the approximate cost of providing the service to different types of properties (such as commercial, industrial, or residential property). Local governments usually send monthly bills to property owners to collect these fees, although some fees are placed on the property tax bill. Local governments generally hold public hearings before creating or increasing such a fee, but do not hold elections on fees.

Proposed Requirements for Property-Related Fees. This measure would restrict local governments' ability to charge "property-related" fees. (Fees for water, sewer, and refuse collection service probably meet the measure's definition of a property-related fee. Gas and electric fees and fees charged to land developers are specifically exempted.)

Specifically, the measure states that *all* local property-related fees must comply by July 1, 1997 with the following restrictions:

No property owner's fee may be more than the cost to provide service to that property owner's land.

No fee may be charged for fire, police, ambulance, library service, or any other service widely available to the



public.

No fee revenue may be used for any purpose other than providing the property-related service.

Fees may only be charged for services immediately available to property owners.

In addition, the measure specifies that before adopting a *new* property-related fee (or increasing an *existing* one), local governments must: mail information about the fee to every property owner, reject the fee if a majority of the property owners protest in writing, and hold an election on the fee (unless it is for water, sewer, or refuse collection service).

Taken together, these fee restrictions would require local governments to reduce or eliminate some existing fees. Unless local governments increased taxes to replace these lost fee revenues, spending for local public services likely would be decreased. The measure's requirements would also expand local governments' administrative workload. For example, local governments would have to adjust many property-related fees, potentially (1) setting them on a block-by-block or parcel-by-parcel basis and (2) ending programs that allow low-income people to pay reduced property-related fees. Local governments would also have to mail information to every property owner and hold elections.

Assessments

Current Practice. Local governments charge assessments to pay for projects and services that benefit specific properties. For example, home owners may pay assessments for sidewalks, streets, lighting, or recreation programs in their neighborhood. Assessments are also called "benefit assessments," "special assessments," "maintenance assessments," and similar terms. Local governments typically place assessment charges on the property tax bill.

To create an assessment, state laws require local governments to determine which properties would benefit from a project or service, notify the owners, and set assessment amounts based on the approximate benefit property owners would receive. Often, the rest of the community or region also receives some general benefit from the project or service, but does not pay a share of cost. Typical assessments that provide general benefits include fire, park, ambulance, and mosquito control assessments. State laws generally require local governments to reject a proposed assessment if more than 50 percent of the property owners protest in writing.

Some local governments also levy "standby charges," which are similar to assessments. Standby charges commonly finance water and sewer service expansions to new households and businesses. (The measure treats standby charges as assessments.)

Proposed Requirements for Assessments. This measure would place extensive requirements on local governments charging assessments. Specifically, the measure requires all *new* or *increased* assessments--and some *existing* assessments---to meet four conditions.

First, local governments must estimate the amount of "special benefit" landowners receive--or would receive--from a project or service. Special benefit is defined as a particular benefit to land and buildings, not a general benefit to the public at large or a general increase in property values. If a project provides both special benefits *and* general benefits, a local government may charge land owners for only for the cost of providing the special benefit. Local government must use general revenues (such as taxes) to pay the remaining portion of the project or service's cost. In some cases, local government may not have sufficient revenues to pay this cost, or may choose not to pay it. In these cases, a project or service would not be provided.

Second, local governments must ensure that no property owner's assessment is greater than the cost to provide the improvement or service to the owner's property. This provision would require local governments to examine assessment amounts in detail, potentially setting them on a parcel-by-parcel or block-by-block basis.

Third, local governments must charge schools and other public agencies their share of assessments. Currently, public agencies generally do not pay assessments.

Finally, local governments must hold a mail-in election for each assessment. Only property owners and any renters



responsible for paying assessments would be eligible to vote. Ballots cast in these elections would be weighted based on the amount of the assessment the property owner or renter would pay. For example, if a business owner would pay twice as much assessment as a homeowner, the business owner's vote would "count" twice as much as the homeowner's vote.

Figure 1 summarizes the existing assessments that would be exempt from the measure's requirements. We estimate that more than half of all existing assessments would qualify for an exemption. All other existing assessments must meet the measure's requirements--including the voter approval requirement--by July 1, 1997.

Figure 1

Existing Assessments Exempt from the Measures's Requirements

Assessments previously approved by voters--or by all property owners at the time the assessment was created.

Assessments where all the funds are used to repay bond obligations.

Assessments where all the funds are used to pay for sidewalks, streets, sewers, water, flood control, drainage systems or, "vector control" (such as mosquito control).

Taxes

Current Practice. Local governments typically use taxes to pay for general government programs, such as police and fire services. Taxes are "general" if their revenues can be used to pay for many government programs, rather than being reserved for specific programs. Proposition 62--a statutory measure approved by the voters in 1986--requires new local general taxes to be approved by a majority vote of the people. Currently, there are lawsuits pending as to whether this provision applies to cities that have adopted a local charter, such as Los Angeles, Long Beach, Sacramento, San Jose, and many others.

Proposed Requirements for Taxes. The measure states that all *future* local general taxes, including those in cities with charters, must be approved by a majority vote of the people. The measure also requires *existing* local general taxes established after December 31, 1994 without a vote of the people to be placed before the voters within two years.

Other Provisions

Burden of Proof. Currently, the courts allow local governments significant flexibility in determining fee and assessment amounts. In lawsuits challenging property fees and assessments, the taxpayer generally has the "burden of proof" to show that they are not legal. This measure shifts the burden of proof in these lawsuits to local government. As a result, it would be easier for taxpayers to win lawsuits, resulting in reduced or repealed fees and assessments.

Initiative Powers. The measure states that Californians have the power to repeal or reduce any local tax, assessment, or fee through the initiative process. This provision broadens the existing initiative powers available under the State Constitution and local charters.

Fiscal Impact

Revenue Reductions

Existing Revenues. By July 1, 1997, local governments would be required to reduce or repeal existing property-related fees and assessments that do not meet the measure's restrictions on (1) fee and assessment amounts or (2) the use of these revenues. The most likely fees and assessments affected by these provisions would be those for:



park and recreation programs, fire protection, lighting, ambulance, business improvement programs, library, and water service. Statewide, local government revenue reductions probably would exceed \$100 million annually. The actual level of revenue reduction would depend in large part on how the courts interpret various provisions of the measure. In addition, because local governments vary significantly in their reliance upon fees and assessments, the measure's impact on individual communities would differ greatly.

Within two years, local governments also would be required to hold elections on some recently imposed taxes and existing assessments. The total amount of these taxes and assessments is unknown, but probably exceeds \$100 million statewide. If voters do not approve these existing taxes and assessments, local governments would lose *additional* existing revenues.

New Revenues. The measure's restrictions and voter-approval requirements would constrain new and increased fees, assessments, and taxes. As a result, local government revenues in the future would be lower than they would be otherwise. The extent of these revenue reductions would depend on court interpretation of the measure's provisions and local government actions to replace lost revenues.

Summary of Revenue Reductions. In the short term, local government revenues probably would be reduced by more than \$100 million annually. Over time, local government revenues would be significantly lower than they would otherwise be, potentially by hundreds of millions of dollars annually. Individual and business payments to local government would decline by the same amount. In general, these local government revenue losses would result in comparable reductions in spending for local public services.

Cost Increases

Local governments would have significantly increased costs to hold elections, calculate fees and assessments, notify the public, and defend their fees and assessments in court. These local increased costs are unknown, but could exceed \$10 million initially, and lesser amounts annually after that.

School and community college districts, state agencies, cities, counties, and other public agencies would have increased costs to pay their share of assessments. The amount of this cost is not known, but could total over \$10 million dollars initially, and increasing amounts in the future.

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218

Voter Approval for Local Government Taxes. Limitations on Fees, Assessments, and Charges. Initiative Constitutional Amendment.

Argument in Favor of Proposition 218

VOTE YES ON PROPOSITION 218. IT WILL GIVE YOU THE RIGHT TO VOTE ON TAX INCREASES!

Proposition 218 guarantees your right to vote on local tax increases—even when they are called something else, like “assessments” or “fees” and imposed on homeowners.

Proposition 218 guarantees your right to vote on taxes imposed on your water, gas, electric, and telephone bills.

Proposition 218 does NOT prevent government from raising and spending money for vital services like police, fire and education. If politicians want to raise taxes they need only convince local voters that new taxes are really needed.

Proposition 218 simply extends the long standing constitutional protection against politicians imposing tax increases without voter approval.

After voters passed Proposition 13, politicians created a loophole in the law that allows them to raise taxes without voter approval by calling taxes “assessments” and “fees.”

Once this loophole was created, one lawyer working with politicians wrote, assessments “are now limited only by the limits of human imagination.”

How imaginative can the politicians be with assessments? Here are a few examples among thousands:

- A view tax in Southern California—the better the view of the ocean you have the more you pay.
- In Los Angeles, a proposal for assessments for a \$2-million scoreboard and a \$6-million equestrian center to be paid for by property owners.
- In Northern California, taxpayers 27 miles away from a park are assessed because their property supposedly benefits from that park.
- In the Central Valley, homeowners are assessed to refurbish a college football field.

TAXPAYERS HAVE NO RIGHT TO VOTE ON THESE TAX INCREASES AND OTHERS LIKE THEM UNLESS PROPOSITION 218 PASSES!

Proposition 218 will significantly tighten the kind of benefit assessments that can be levied.

Here are examples of why fees and assessments and other nonvoted taxes are so unfair:

- The poor pay the same assessments as the rich. An elderly widow pays exactly the same on her modest home as a tycoon with a mansion.
- There are now over 5,000 local districts which can impose fees and assessments without the consent of local voters. Special districts have increased assessments by over 2400% over 15 years. Likewise, cities have increased utility taxes 415% and raised benefit assessments 976%, a ten-fold increase.

Non-voted taxes on electricity, gas, water, and telephone services hit renters and homeowners hard.

And, retired homeowners get hit doubly hard!

To confirm the impact of fees and assessments on you, look at your property tax bill. You will see a growing list of assessments imposed without voter approval. The list will grow even longer unless Proposition 218 passes.

Proposition 218 will allow you and your neighbors—not politicians—to decide how high your taxes will be. It will allow those who pay assessments to decide if what they are being asked to pay for is worth the cost.

FOR THE RIGHT TO VOTE ON TAXES, VOTE YES ON PROPOSITION 218.

JOEL FOX

President, Howard Jarvis Taxpayers Association

JIM CONRAN

President, Consumers First

RICHARD GANN

President, Paul Gann's Citizens Committee

Rebuttal to Argument in Favor of Proposition 218

PROPOSITION 218 IS NO FALSE ALARM . . . IT HURTS

Propositions can deceive, so carefully judge who you believe.

Beware of wild claims for new “constitutional rights” and people who pretend concern about widows and orphans.

Read Proposition 218 yourself and see how large corporations, big landowners and foreign interests gain more voting power than YOU.

Promoters say you get “tax reform” . . . you may actually get serious cutbacks in local service and FEWER VOTING RIGHTS for millions of California citizens.

Sometimes we hear hysterical warnings about bad things that never occur . . . Proposition 218 is a REAL threat. On Proposition 218 consider the harm to EXISTING local services, not vague future threats:

- May reduce CURRENT funding for police, fire and emergency medical programs across California.
- Worsens SCHOOL CROWDING by making public schools pay NEW TAXES, cutting classroom teaching.
- Could eliminate LifeLine utility support for SENIORS and disabled citizens.

CONSTITUTIONAL POWER SHIFT.

Proposition 218 etches this into the state Constitution:

- Blocks 3 million Californians from voting on tax assessments. The struggling young couple renting a small home, WILL HAVE NO VOTE on the assessments imposed on the house they rent.
- Grants special land interests more voting power than average homeowners. The “elderly widow” promoters cite will be banned from voting if she is a renter, or her voting power dwarfed by large property owners.
- Gives non-citizens voting rights on your community taxes. Proposition 218 is a great deal for wealthy special interests. But it's a bad deal for the average taxpayer, homeowner and renter.

HOWARD OWENS

Congress of California Seniors

LOIS TINSON

President, California Teachers Association

RON SNIDER

President, California Association of Highway Patrolmen

LEGISLATIVE INTENT SERVICE (800) 666-1917

Voter Approval for Local Government Taxes. Limitations on Fees, Assessments, and Charges. Initiative Constitutional Amendment.

218

Argument Against Proposition 218

PROPOSITION 218 DILUTES VOTING RIGHTS, HURTS LOCAL SERVICES

In the disguise of tax reform, Proposition 218's Constitutional Amendment **REDUCES YOUR VOTING POWER** and gives huge voting power to corporations, foreign interests and wealthy land owners.

It cuts police, fire, library, park, senior, and disabled services and diverts funds needed for classroom-size reductions.

Read Proposition 218 carefully—it's a wolf, not a lamb!

YOU LOSE RIGHTS; CORPORATIONS, DEVELOPERS, NON-CITIZENS GAIN VOTING POWER

Section 4(e) of Proposition 218 changes the Constitution to give corporations, wealthy landowners and developers **MORE VOTING POWER THAN HOMEOWNERS**. It lets large outside interests control community taxes—against the will of local citizens.

EXAMPLE: An oil company owns 1000 acres, you own one acre; the oil corporation gets 1000 times more voting power than you.

While Prop. 218 gives voting power to outside interests, Section 4(g) denies voting rights to more than 3,000,000 California renters.

Reducing American citizens' Constitutional rights, it grants voting rights to corporations and absentee landowners—even foreign citizens.

EXAMPLE: A shopping center owned by a foreign citizen is worth 100 times as much as your home; that person gets 100 times more voting power than you!

Every citizen should have the right to vote if a community is voting on local assessments for police, fire, emergency medical and library programs. It's unfair to give voting power to non-citizens, big landowners and developers, yet deny it to millions of Californians.

MAY CUT LOCAL POLICE, FIRE PROTECTION

Section 6(b)(5) eliminates vital funding sources for local police, fire, emergency medical and library services.

Proposition 218 goes too far—may forbid emergency assessments for earthquakes, floods and fires.

Don't handcuff police and firefighters. The California Police Chiefs Association, Fire Chiefs Association and California Professional Firefighters ask you to vote NO.

The impartial Legislative Analyst's report shows how Proposition 218 could impede LifeLine support for the elderly and disabled. It prohibits seniors and disabled from receiving needed utility services unless they pay all costs themselves.

Proposition 218 cuts more than \$100 million from local services, yet wastes tens of millions each year by changing the Constitution to require 5,000 local elections even if local citizens don't want an election . . . even if the election cost is more than the potential revenue.

MAKES SCHOOL CROWDING WORSE

California teachers oppose Proposition 218 because Section 4(a) imposes a new tax on public school property, diverting millions from classroom programs to pay for non-school expenses.

California already has the most crowded classrooms in America (dead last of 50 states). Proposition 218 makes school crowding worse.

SHELL GAME

This measure takes a few good ideas, but twists and perverts them. It cripples the best local services and puts more power into the hands of special interests and non-citizens.

Proposition 218 goes too far. Assessment laws DO need improvement, but Proposition 218 is the wrong way to do it. It does more harm than good, restricting our voting rights, hurting schools, seniors and public safety programs.

Please vote NO on Proposition 218.

FRAN PACKARD

President, League of Women Voters of California

CHIEF RON LOWENBERG

President, California Police Chiefs' Association

CHIEF JEFF BOWMAN

President, California Fire Chiefs' Association

Rebuttal to Argument Against Proposition 218

Arguments against Proposition 218 are misleading and designed to confuse voters. In truth:

1. Proposition 218 expands your voting rights. It **CONSTITUTIONALLY GUARANTEES** your right to vote on taxes.
2. Under Proposition 218, only California registered voters, including renters, can vote in tax elections. Corporations and foreigners get no new rights.
3. Current law already allows property owners, including nonresidents, to act on property assessments based on the assessment amount they pay. This is **NOT** created by Proposition 218.
4. "Lifeline" rates for elderly and disabled for telephone, gas, and electric services are **NOT** affected.
5. Proposition 218 allows voter approved taxes for police, fire, education.

Proposition 218 simply gives taxpayers the right to vote on taxes and stops politicians' end-runs around Proposition 13.

That's why ordinary taxpayers, seniors, parents, homeowners, renters, consumer advocates, support Proposition 218.

Under Proposition 218, officials must convince taxpayers that tax increases are justified. Politicians and special interest groups don't like this idea. But they can't win by saying "taxpayers should not vote on taxes," so they use misleading statements to confuse a simple question.

That question: **DO YOU BELIEVE TAXPAYERS SHOULD HAVE THE RIGHT TO VOTE ON TAXES?** If you answered "yes", **VOTE YES ON PROPOSITION 218.**

Read the nonpartisan, independent **SUMMARY** by the Attorney General, which begins "**VOTER APPROVAL FOR LOCAL GOVERNMENT TAXES.**" And, by all means read your property tax bill, due out now. Then you'll know the truth.

FOR THE RIGHT TO VOTE ON TAXES, VOTE YES ON PROPOSITION 218!

CAROL ROSS EVANS

Vice-President, California Taxpayers Association

FELICIA ELKINSON

Past President, Council of Sacramento Senior Organizations

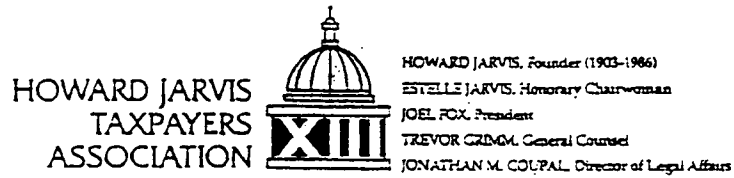
LEE PHELPS

Founder, Alliance of California Taxpayers and Involved Voters (ACTIV)

LEGISLATIVE INTENT SERVICE (800) 666-1917



EXHIBIT B



December 6, 1996

Joanne Spears
LEAGUE OF CALIFORNIA CITIES
1400 K Street
Sacramento, CA 95814

Dear Ms. Spears:

Pursuant to your request, enclosed is a copy of the Annotated version of Proposition 218. If you have questions after reviewing this document, please do not hesitate to call. Thank you.

Sincerely,

Jonathan M. Coupal
Director of Legal Affairs

Enclosure

RIGHT TO VOTE ON TAXES ACT (PROPOSITION 218)

[ANNOTATED AS OF SEPTEMBER 5, 1996]

SECTION 1. TITLE. This Act shall be known and may be cited as the Right to Vote on Taxes Act.

[Annotation: The title reflects the unifying theme – there are three main elements of the initiative and each relates to voter and taxpayer control over local taxes]

SECTION 2. FINDINGS AND DECLARATIONS. The People of the State of California hereby find and declare that Proposition 13 was intended to provide effective tax relief and to require voter approval of tax increases. However, local governments have subjected taxpayers to excessive tax, assessment, fee and charge increases that not only frustrate the purposes of voter approval for tax increases, but also threaten the economic security of all Californians and the California economy itself. This measure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent.

[Annotation: Findings specifically refer to Proposition 13. If local governments and courts had not abused the letter and spirit of 13, this initiative would not be necessary. Again, focus is on voter and taxpayer control]

SECTION 3. VOTER APPROVAL FOR LOCAL TAX LEVIES. Article XIII C of the California Constitution is hereby added:

[Annotation: This section constitutionalizes Proposition 62, Government Code Section 53720, et seq. Although Proposition 62 was upheld by the California Supreme Court in Santa Clara County Local Transportation Authority v. Guardino (Howard Jarvis Taxpayers Association, et al., Real Parties in Interest) (1995) 11 Cal.4th 220, that initiative was a statutory initiative and its applicability to charter cities has been called into question. If Proposition 218 passes, there will be no question that all the voter approval requirements will apply to charter cities. As noted below, this section also makes Proposition 62 stronger in its application.]

SEC. 1. Definitions.

As used in this Article:

- (a) "General tax" means any tax imposed for general governmental purposes.
- (b) "Local government" means any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity.

Right to Vote on Taxes Act

Page 2

[Annotation: Regional governments were included to ensure that provisions of Act apply to all governmental entities other than the state itself.]

- (c) "Special District" means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions with limited geographic boundaries including, but not limited to, school districts and redevelopment agencies.

[Annotation: Even more expansive definition than Proposition 62. No government, except the state itself, is exempt]

- (d) "Special tax" means any tax imposed for specific purposes including taxes imposed for specific purposes which are placed into a general fund.

[Annotation: This reinforces language of Rider v. San Diego dealing with special taxes. The key is the purpose of the funding, not the name of the bank account. A number of analyses of Proposition 218 prepared by local governments have stated that the revised transportation tax in Santa Clara County (proposing "dual" measures on the ballot) would be illegal under this definition.]

SEC. 2. Local Government Tax Limitation.

Notwithstanding any other provision of this Constitution:

- (a) All taxes imposed by any local government shall be deemed to be either general taxes or special taxes. Special purpose districts or agencies, including school districts, shall have no power to levy general taxes.

[Annotation: This provision merely reflects language of Supreme Court in the Rider v. San Diego decision saying special districts, by their special nature, have no power to levy general taxes.]

- (b) No local government may impose, extend or increase any general tax unless and until such tax is submitted to the electorate and approved by a majority vote. A general tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government except in cases of emergency declared by a unanimous vote of the governing body.

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Page 3

[Annotation: Similar to provision in Proposition 62 with one clarification – the ballot language could incorporate future increases and if the ballot measure is approved, then the government would not have to go back to the voters for those increases. As long as the government wants to levy now but could raise to the voter approved level at some later time. Also, elections are consolidated with elections at which members of governing body are elected, except in cases of emergency. Note that a unanimous vote is needed to declare an emergency but this has always been interpreted as a unanimous vote of those present. The concern is that the nature of the emergency might keep some members from attending a meeting.]

- (c) Any general tax imposed, extended or increased, without voter approval, by any local government on or after January 1, 1995, and prior to the effective date of this Article, shall continue to be imposed only if approved by a majority vote of the voters voting in an election on the issue of the imposition, which election shall be held within two years of the effective date of this Article and in compliance with subdivision (b) of this section.

[Annotation: Effective date of January 1, 1995 was necessary to prevent a "rush" of new taxes to meet what would otherwise be an effective date of November, 1996. In any event, this provision is not draconian for local governments which have been complying with the requirements of Proposition 62.]

- (d) No local government may impose, extend or increase any special tax unless and until such tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved.

SEC. 3. Initiative Power For Local Taxes, Assessments, Fees and Charges.

Notwithstanding any other provision of this Constitution, including, but not limited to, Article II, Sections 8 and 9, the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge. The power of initiative to affect local taxes, assessments, fees and charges shall be applicable to all local governments and neither the legislature nor any local government charter shall impose a signature requirement higher than that applicable to statewide statutory initiatives.

[Annotation: This section merely "constitutionalizes" Rossi v. Brown, a recent decision of the California Supreme Court upholding the right of the electorate to use the local

Right to Vote on Taxes Act
Page 4

initiative power to reduce or eliminate government imposed levies via the initiative power. It provides a "last resort" remedy.]

SECTION 4. ASSESSMENT AND PROPERTY RELATED FEE REFORM.

[Annotation: This is the third major element of Proposition 218.]

Article XIID of the California Constitution is hereby added:

SEC. 1. Application.

Notwithstanding any other provision of law, the provisions of this Article shall apply to all assessments, fees and charges whether imposed pursuant to state statute or local government charter authority. Nothing in this Article or Article XIIC shall be construed to:

- (a) provide any new authority to any agency to impose a tax, assessment, fee or charge;
- (b) affect existing laws relating to the imposition of fees or charges as a condition of property development;

[Annotation: the purpose of this provision is to leave unaffected any existing law relating to developer fees. Although there have been abuses in this area by local governments (resulting in substantially increased housing costs), the focus of Proposition 218 is on those levies imposed simply by virtue of property ownership. Developer fees, in contrast, are imposed as an incident of the voluntary act of development. Moreover, neither this section nor other provisions of Proposition 218 would impair the ability of developers to employ "land secured financing" as a means to finance infrastructure.] or;

- (c) affect existing laws relating to the imposition of timber yield taxes.

[These taxes are already addressed in the California Constitution and by legislation. The intent of Proposition 218 was to leave this entire area of law unaffected.]

SEC. 2. Definitions.

As used in this article:

- (a) "Agency" means any local government as defined in Article XIIC,

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Page 5

Section 1(b).

- (b) "Assessment" means any levy or charge upon real property by an agency for a special benefit conferred upon the real property. "Assessment" includes, but is not limited to, "special assessment," "benefit assessment," "maintenance assessment" and "special assessment tax."
- (c) "Capital cost" means the cost of acquisition, installation, construction, reconstruction or replacement of a permanent public improvement by an agency.
- (d) "District" means an area determined by an agency to contain all parcels which will receive a special benefit from a proposed public improvement or property-related service.
- (e) "Fee" or "charge" means any levy other than an ad valorem tax, a special tax or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including user fees or charges for a property related service.

[Annotation: definition of fees, for purposes of this article, are limited to fees imposed as an incident of property ownership. DMV fees, statewide fees, fines, and recreation fees such as gate fees, are not affected]

- (f) "Maintenance and operation expenses" means the cost of rent, repair, replacement, rehabilitation, fuel, power, electrical current, care, and supervision necessary to properly operate and maintain a permanent public improvement.
- (g) "Property ownership" shall be deemed to include tenancies of real property where tenants are directly liable to pay the assessment, fee, or charge in question.

[Annotation: Under this definition, if a tenant of real property is directly liable to pay an assessment, they would have the right to protest and vote. This will depend on the terms of the lease. "Direct pass throughs" are more common in commercial leases as opposed to residential leases.]

- (h) "Property-related service" means a public service having a direct relationship to property ownership.

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Page 6

- (II) "Special benefit" means a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute "special benefit."

SEC. 3. Property Taxes, Assessments, Fees and Charges Limited.

[Annotation: This section provides an exclusive list of those levies which can be imposed on property]

- (a) 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:
- (1) The ad valorem property tax imposed pursuant to Article XIII and Article XIII A of this Constitution.
 - (2) Any special tax receiving a two-thirds vote pursuant to Article XIII A, Section 4 of this Constitution.

[Annotation: Proposition 218 permits special taxes with a two-thirds vote consistent with Proposition 13. Although there remain significant policy issues with respect to any non-ad valorem property tax, the authors of Proposition 218 realized it would be difficult to repeal existing statutory authorization for special taxes on property as long as those taxes secured the requisite two-thirds vote.]

- (3) Assessments as provided by this Article.
 - (4) Fees or charges for property related services as provided by this Article.
- (b) For purposes of this Article, fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership.

[Annotation: Such services, even when provided by a public entity, are usually metered and, therefore, probably meet the "cost of service" requirements of this initiative. Therefore, they were exempted from application.]

SEC. 4. Procedures and Requirements for All Assessments.

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Page 7

- (a) 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 or the maintenance and operation expenses of a public improvement or for 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 must separate the general benefits from the special benefits conferred on a parcel. Parcels within a district that are owned or used by any agency, the State of California or the United States shall not be exempt from assessment unless the agency can demonstrate by clear and convincing evidence that such publicly owned parcels in fact receive no special benefit.

[Annotation: These new requirements for assessments are actually similar to those imposed by traditional assessment law. The overall purpose of this section is to permit assessments to be used, once again, as a legitimate financing mechanism and not just a means to impose flat rate parcel taxes. These requirements are: assessments must be proportional to the benefit; only special benefits are assessable; and public properties must pay their fair share. Historically, public properties were also assessed benefit assessments. (See, e.g., Municipal Improvement Act of 1911). Only in recent years when assessments have been used to impose what are, in effect, parcel taxes, have public properties received blanket exemptions from assessments. Under Proposition 218, if public property is benefited the same as private property, then it should also be assessed.]

- (b) All assessments must be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California.

[Annotation: This requirement is consistent with traditional assessment law. Only since Proposition 13 have non-engineers been able to prepare "engineers' reports."]

- (c) 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 such

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payments, the reason for such 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. Each notice shall also include, in a conspicuous place thereon, a summary of the procedures applicable to the completion, return and tabulation of the ballots required pursuant to subdivision (d), including a disclosure statement that the existence of a majority protest, as defined in subdivision (e), will result in the assessment not being imposed.

[Annotation: Notice requirements for assessments have been substantially liberalized in recent years. Proposition 218 would require mailed notice, not just publication in a newspaper. Mailed notice would also include a ballot for to be returned by the property owners]

- (d) Each such notice mailed to owners of identified parcels within the district shall contain a ballot which includes the agency's address for receipt of any such ballot once completed by any owner receiving such notice whereby each such owner may indicate his or her name, reasonable identification of the parcel and support or opposition to the proposed assessment.
- (e) 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.

[Annotation: Under Proposition 218, assessments may not be imposed without majority approval of property owners. Ballots are weighted according to financial obligation. Several existing statutes call for the "weighting" of votes so this does not represent a significant change in the law. In any event, this is consistent with policy of permitting those financially obligated to pay to impact the decision of whether the levy is imposed. Moreover, under existing law, the failure to file a protest counts as a "yes" vote. This changes the current methodology by subjecting the levy to a simple majority vote of those property owners who return ballots.]

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- (f) In any legal action contesting the validity of any assessment, the burden shall be on the agency to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large and that the amount of any contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question.

[Annotation: Although this provision shifts burden of proof in taxpayers' favor on issue of benefits to property, it is consistent with some current case law. See, e.g., Beaumont Investors v. Beaumont-Cherry Water Dist. (1985) 165 Cal.App.3d 567.]

- (g) Because only special benefits are assessable, electors residing within the district who do not own property within the district shall not be deemed under this Constitution to have been deprived of the right to vote for any assessment. If a court determines that the Constitution of the United States or other federal law requires otherwise, the assessment shall not be imposed unless approved by a two-thirds vote of the electorate in the district in addition to being approved by the property owners as required by Section 4(e).

[Annotation: Under existing law, it is not a violation of the right to vote to limit elections to property owners if the district provides only a narrow, property related service. So, Cal. Rapid Transit District v. Bolen (1992) 1 Cal.4th 654. However, in the unlikely event this becomes an issue, this provision would simply require an additional vote of the registered voters to impose the assessment.]

SEC. 5. Effective Date

[Annotation: Although titled "effective date," this section has some important exceptions regarding the requirements for assessments. If one of the following exceptions does not apply, then an existing assessments must cease by July 1, 1997 unless ratified by the property owners]

Pursuant to Article II, Section 10(a), the provisions of this Article shall become effective the day after the election unless otherwise provided. Beginning July 1, 1997, all existing, new or increased assessments shall comply with this Article. Notwithstanding the foregoing, the following assessments existing on the effective date of this Article shall be exempt from the procedures and

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Page 10

approval process set forth in Section 4:

[Annotation: An assessment is deemed "existing on the effective date of this Article," even if it is the type of assessment which comes up for annual renewal. As long as the assessment rates and methodology remained the same from year to year, the fact that the assessment is "imposed" annually would not necessarily trigger applicability of the requirements of this Article. This would be true even if the total revenue to the district increased due to changes in land use for specific parcels (e.g., newly-created or improved parcels). Again, as long as the assessment rates and methodology remain the same, an increase in revenue as the result of land use changes would not trigger applicability of Section 4. However, the procedures and approval process of Section 4 would apply to the entire assessment in the event the assessments were increased either by the rate of assessment or by a change in methodology].

- (a) any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems or vector control. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4;

[Annotation: This is the "traditional purposes" exception. These existing assessments do not need property owner approval to continue. However, future assessments for these traditional purposes are covered.]

- (b) any assessment imposed pursuant to a petition signed by the persons owning all of the parcels subject to the assessment at the time the assessment is initially imposed. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4;

[Annotation: This provision exempts land secured financing arrangements used by developers. This does not concern us because increased tax liability is capitalized into the purchase price]

- (c) any assessment the proceeds of which are exclusively used to repay bonded indebtedness of which the failure to pay would violate the Contract Impairment Clause of the Constitution of the United States of America;

[Annotation: Even an amendment to the California Constitution cannot impair a contract protected by the federal constitution. However, this exception can only be

Right to Vote on Taxes Act
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used for bonds that are actually protected by the impairment clause. Certificates of Participation and other creative debt instruments would not be protected.] or,

- (d) any assessment which previously received majority voter approval from the voters voting in an election on the issue of the assessment. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.

[Annotation: Although the exception for assessments previously approved by the voters will permit the continued collection of some particularly illegitimate assessments, requiring an additional approval process would be redundant]

SEC. 6. Property Related Fees and Charges.

[Annotation: The purpose of this section is to prevent the exploitation of "fees" as a means to avoid the new restrictions on assessments. Because flat rate parcel taxes have avoided the strictures of Proposition 13 simply by being called "assessments," the drafters are concerned that the same will happen with "fees" – that is, circumventing taxpayer protections by manipulating the label of the levy.]

- (a) Procedures for New or Increased Fees and Charges. An agency shall follow the procedures pursuant to this section in imposing or increasing any fee or charge as defined pursuant to this Article including, but not limited to, the following:
 - (1) The parcels upon which a fee or charge is proposed for imposition shall be identified. The amount of the fee or charge proposed to be imposed upon each parcel shall be calculated. The agency shall 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.

[Annotation: This section is applicable to any fee imposed on a parcel basis or for fees which provide a property related service. It does not affect fees that are not property related such as DMV fees, park fees, or administrative charges imposed by a local government.]

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- (2) The agency shall 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.

[Annotation: Votes on property fees are not weighted in the same manner as assessments because to do so would be administratively costly. A simple majority of fee payers can stop a fee proposal.]

- (b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed or increased by any agency unless it meets all of the following requirements:

[Annotation: These five requirements are applicable to all fees, including those that currently exist. In essence, these requirements mandate that fees not exceed the "cost of service."]

- (1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.
- (2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

[Annotation: Requirements 1 & 2 will prohibit a current practice of siphoning off fee revenue to supplement a city's general fund. This currently occurs both in Los Angeles and Sacramento.]

- (3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.

[Annotation: Under the initiative, fees, just like assessments, must be proportional.]

- (4) 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. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether

Right to Vote on Taxes Act
Page 13

characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4 of this Article.

[Annotation: Requires standby charges to go through assessment procedures. If a current standby charge is in the nature of an assessment, it may take advantage of the current exemptions for assessments. If not, the levy would have to be reimposed as an assessment and meet all requirements of Section 5 or cease to be collected.]

- (5) 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.

[Annotation: This would prohibit the imposition of parcel "charges" for general governmental services. The purpose of this provision is to reverse those levies, such as the County of Los Angeles' parcel "charge" for library services irrespective of use of library services.]

Reliance by an agency on any parcel map including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as incident of property ownership for purposes of this Article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this Article.

- (c) **Voter Approval for New or Increased Fees and Charges.** Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until such fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures similar to those for increases in assessments in the conduct of elections under this subdivision.

[Annotation: Exemption for sewer, water and refuse collection is for voter approval only. Such fees still must meet all of the five substantive requirements of paragraph (b). Exemption is based on philosophy of attempting to reverse the end-runs around Proposition 13. Since water, sewer and refuse collection fees pre-date proposition 13, they were exempted from voter approval]

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Page 14

- (d) Beginning July 1, 1997, all fees or charges shall comply with this Section.

SECTION 5. LIBERAL CONSTRUCTION. The provisions of this Act shall be liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent.

[Annotation: Purpose of this section is to ensure that, in the event of any ambiguity, that the rights of taxpayers will be paramount.]

SECTION 6. SEVERABILITY. If any provision of this Act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining sections shall not be affected, but shall remain in full force and effect, and to this end the provisions of this Act are severable.

[Annotation: Standard severability clause.]

EXHIBIT C

No. 169

CALIFORNIA LEGISLATURE
AT SACRAMENTO
1997-98 REGULAR SESSION

**SENATE
WEEKLY HISTORY**

SHOWING ALL ACTIONS TAKEN ON ALL SENATE MEASURES
TO AND INCLUDING

THURSDAY, JANUARY 29, 1998

PART 1 OF 3

Senate Convened December 2, 1996

DAYS IN SESSION..... 155
CALENDAR DAYS..... 424

Compiled Under the Direction of
GREGORY SCHMIDT
Secretary of the Senate

By
DAVID H. KNEALE, ESQ.
History Clerk



S.B. No. 918—Rainey, Kopp, Maddy, McPherson, and Peace
(Coauthors: Assembly Members Cunneen and Firestone).

An act to amend Section 2001 of the Elections Code, relating to elections.
1997

- Feb. 27—Introduced. Read first time. To Com. on RLS. for assignment. To print.
Mar. 1—From print. May be acted upon on or after March 31.
Mar. 11—To Com. on E. & R.
Mar. 20—Set for hearing April 16.
April 7—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
April 16—Set, first hearing. Failed passage in committee. (Ayes 0. Noes 2. Page 817.) Reconsideration granted.
Dec. 10—Set for hearing January 7.
1998
Jan. 5—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
Jan. 8—From committee: Do pass. (Ayes 4. Noes 0. Page 3385.)
Jan. 12—Read second time. To third reading.
Jan. 26—Read third time. Passed. (Ayes 34. Noes 1. Page 3505.) To Assembly.

S.B. No. 919—Rainey.

An act to amend Section 4000 of the Elections Code, to amend Section 54954.6 of, to add Section 5854 to, and to add Article 4.3 (commencing with Section 53739) and Article 4.6 (commencing with Section 53750) to Chapter 4 of Part 1 of Division 2 of Title 5 of, the Government Code, and to amend Section 9625 of the Streets and Highways Code, relating to local government taxes, charges, and assessments, and declaring the urgency thereof, to take effect immediately.

1997

- Feb. 27—Introduced. Read first time. To Com. on RLS. for assignment. To print.
Feb. 28—From print. May be acted upon on or after March 30.
Mar. 11—To Com. on L.GOV.
Mar. 17—Set for hearing April 16.
April 14—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
April 16—From committee: Do pass. (Ayes 5. Noes 0. Page 784.)
April 17—Read second time. To third reading.
April 21—To Special Consent Calendar.
April 24—Read third time. Urgency clause adopted. Passed. (Ayes 36. Noes 0. Page 930.) To Assembly.
April 24—In Assembly. Read first time. Held at Desk.
May 15—To Coms. on L. GOV. and E., R. & C.A.
May 23—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
June 3—Withdrawn from committee. Re-referred to Com. on E., R. & C.A.
June 17—From committee: Do pass, but first be re-referred to Com. on L. GOV. with recommendation: To Consent Calendar. (Ayes 7. Noes 0.) Re-referred to Com. on L. GOV.
June 24—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
June 26—From committee: Do pass as amended. (Ayes 15. Noes 0.)
June 30—Read second time. Amended. To second reading. Unanimous consent granted to consider without reference to file. Read third time. Amended. To third reading. Read third time. Urgency clause adopted. Passed. (Ayes 72. Noes 0. Page 2925.) To Senate.
June 30—In Senate. To unfinished business. Unanimous consent granted to consider without reference to file. Senate concurs in Assembly amendments. (Ayes 35. Noes 0. Page 1942.) To enrollment.
June 30—Enrolled. To Governor at 2 p.m.
July 1—Approved by Governor.
July 1—Chaptered by Secretary of State. Chapter 38, Statutes of 1997.

EXHIBIT D

SENATE RULES COMMITTEE

SB 919

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 445-6614 Fax: (916) 327-4478

UNFINISHED BUSINESS

Bill No: SB 919
Author: Rainey (R)
Amended: 6/30/97
Vote: 27 - Urgency

WITHOUT REFERENCE TO FILE

SENATE LOCAL GOVERNMENT COMMITTEE: 5-0, 4/16/97

AYES: Ayala, Johnston, Kopp, Rainey, Watson

NOT VOTING: Calderon, Craven

SENATE FLOOR: 36-0, 4/24/97 (Consent)

AYES: Alpert, Ayala, Brulte, Burton, Costa, Dills, Greene, Haynes, Hughes, Hurtt, Johannessen, Johnson, Johnston, Karnette, Kelley, Knight, Kopp, Lee, Leslie, Lewis, Lockyer, Maddy, McPherson, Monteith, Mountjoy, O'Connell, Peace, Polanco, Rainey, Rosenthal, Sher, Solis, Thompson, Vasconcellos, Watson, Wright

NOT VOTING: Calderon, Craven, Hayden, Schiff

ASSEMBLY FLOOR: Not Available

SUBJECT: Proposition 218 implementation

SOURCE: Author

DIGEST: This bill enacts the Proposition 218 Omnibus Implementation Act which prescribes definitions and implementation provisions of Proposition 218 relating to imposition of taxes, assessments and property-related fees and charges.



This bill specifies how the constitutional requirements apply to ongoing annual assessments with specified exceptions.

Assembly Amendments:

1. Delete language which specified that assessment ballots are public records.
2. Delete references to "majority protest" that would be required on the ballot that the voters would see.
3. Add definitions of terms used by Proposition 218.
4. Clarify and codify other terms and provisions specified in Proposition 218.
5. Delete definition of "refuse collection services."
6. Change content of statement language to state that the assessment will not be imposed if the ballots submitted in opposition to the assessment exceed those submitted in favor of the assessment, with ballots weighted according to the proportional financial obligation of the affected property.

ANALYSIS: In November 1996, California voters approved Proposition 218, a constitutional amendment which restricts local officials' ability to impose taxes, assessments, and property-related fees, and imposed various voter approval requirements on these levies. The initiative also allows local voters to use the initiative power to reduce and repeal local taxes, assessments and fees and charges.

Even before its passage, local officials and public finance experts argued that Proposition 218 was unclear with respect to the types of revenues affected, the procedures to obtain voter approval, and the exemptions to its provisions. The Senate Local Government Committee held a hearing in September 1996 to discuss and catalogue some of the questions and concerns regarding the initiative. After California voters approved the measure, interested parties continue to express confusion over how to implement its provisions.

In response to numerous questions raised by the initiative, the Legislative Analyst's Office convened meetings with local agency representatives, taxpayer advocates, the public finance community, legislative representatives,

CONTINUED



and developers to discuss legislative options to clarify Proposition 218 . After more than three months of discussions, that group forged consensus on several issues and is unanimously supporting provisions to clean-up and clarify Proposition 218.

This bill:

1. Specifies that the process of determining whether the voters will approve or disapprove a proposed assessment is an assessment ballot proceeding, rather than an election. This means that typical election procedures are not required to be followed: ballot pamphlet, pro and con arguments, rebuttal arguments, etc.
2. Clarifies that "notice by mail" means notice by U.S. Mail. Specifies that a mailed ballot may be included in any other mailing to the record owner of property.
3. Clarifies that a local agency may propose a range of rates or amounts in a tax, assessment, property-related fee, or property-related charge that would be placed before the local voters. An inflation adjustment would also be allowed, provided it is not applied to a percentage. If approved by the voters, the local agency may set the rate at any amount that is less than or equal to that approved by the voters.
4. Clarifies the requirements that public agencies must comply with to (a) raise or establish an assessment, or (b) continue certain existing assessments.

These requirements include notice by mail to property owners; content of the notice; the time, date and location of the public hearing; how the property owner completes the ballot; how the ballot is returned; and how the ballot is tabulated. These provisions would supersede other statutory requirements, except for certain projects under the Streets and Highways Code.

5. Clarifies that certain assessments (for sidewalks, streets, sewers, water, flood control, drainage, and vector control) that are exempt from the provisions of Proposition 218 until the assessments are "increased" would remain exempt even though the assessments are "renewed" annually.

CONTINUED



Essentially this declares that "renewed" shall not be considered to be a form of "increased" for these exempt assessments.

6. Specifies that Proposition 218 shall not be construed to mean that any purchaser of a bond or other debt issued by a local agency assumes any risk or in any way consents to any initiative that would constitute an impairment of contract that is protected by Section 10 of Article I of the United States Constitution.
7. Allows public agencies to issue refunding bonds (a refinancing of existing debt) without complying with Proposition 218 if it lowers local debt costs.
8. Specifies that the notice and hearing provisions for assessments specified in Proposition 218 supersede the notice and hearing provisions in the Brown Act.
9. Specifies that the notice include a statement that the assessment shall not be imposed if the ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment, with ballots weighted according to the proportional financial obligation of the affected property.

Comments

Proposition 218 (1996) regulates the imposition of local taxes, assessments, and property-related fees and charges. Specifically, the initiative imposes limitations and property owner and voter approval requirements on the imposition of local financing mechanisms, and allows voters to enact initiatives to prohibit or repeal local levies. Proposition 218 added two entirely new articles to the California Constitution. These new articles use terms and outline procedures that need additional clarification. This bill clarifies and codifies some of Proposition 218's provisions. The bill represents consensus solutions crafted by local officials, public finance experts, taxpayer advocates, and other stake-holders.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 6/27/97)

Association of California Water Agencies
California Assessments, Special Taxes and Other Financing Facilities

CONTINUED



California Association of Bond Lawyers
California Association of County Treasurers and Tax Collectors
California Association of Sanitation Agencies
California State Association of Counties
California Taxpayers' Association
Contra Costa Water District
Cities of Carlsbad, Claremont, Los Angeles, Stockton, Poway, Del Mar
Counties of San Bernardino, Santa Barbara, Madera
Howard Jarvis Taxpayers Association
League of California Cities
Regional Council of Rural Counties

LB:ctl 6/30/97 Senate Floor Analyses
SUPPORT/OPPOSITION: SEE ABOVE
***** END *****



PROOF OF SERVICE
Ford Green v. Marin County Flood Control District, et al.
Supreme Court Case No. S172199

I, Kimberly Nielsen, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 555 West 5th Street, 31st Floor, Los Angeles, California 90013. On July 24, 2009, I served the document(s) described as **NOTICE OF MOTION AND MOTION FOR JUDICIAL NOTICE** on the interested parties in this action as follows:

Patrick K. Faulkner, County Counsel
Sheila Shah Lightblau, Deputy
3501 Civic Center Drive, Room 275
San Rafael, CA 94903
*Attorneys for Defendant and Respondent
Marin County Flood Control District*

Ford Greene Elector
Hub Law Offices
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San Anselmo, CA 94960-1949
Attorneys for Appellant in Pro Per

Attorney General of California
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Thomas M. McInerney
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One Market Street, Suite 1300
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California State Court of Appeal
350 McAllister Street
San Francisco, CA 94102-3600

Hon. Lynn Duryee
Marin County Superior Court
3501 Civic Center Drive
San Rafael, CA 94903

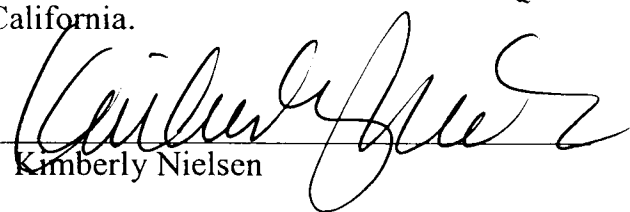
****Hand delivered to:**

Supreme Court of the State of California
350 McAllister Street
San Francisco, CA 94102
(Original + 13 copies)

BY MAIL: The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 24, 2009, at Los Angeles, California.



Kimberly Nielsen