S172199

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

****

SUPREME COURT
FILED

OCT 09 2009

Frederick K. Ohlrich Clerk

Deputy

FORD GREENE,

Plaintiff and Appellant,

vs.

MARIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT,

Defendant and Respondent;

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

Intervenors and Respondents.

****

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

****

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

****

APPELLANT'S REQUEST FOR JUDICIAL NOTICE

VOLUME 2 (Exhibits 12a-17)

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APPELLANT'S REQUEST FOR JUDICIAL NOTICE

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EXHIBIT 12a

218 -- Local Taxes

An initiative constitutional amendment that limits the ability of local governments to raise revenue through fees, assessments and taxes.

Background: Since the passage of Proposition 13 in 1978, supporters of the landmark tax-reform measure have battled local government officials over the taxing authority of cities, counties and special districts. Proposition 13 supporters insist their measure was intended to reduce local government taxation and the burden on taxpayers. But loopholes have allowed local governments to use other financing methods for projects and services, namely the expanded levy of fees and assessments on private property owners. Publicly owned property, such as schools, does not pay assessments, however. These alternative revenue sources do not require voter approval, as stipulated in the 1992 California Supreme Court case Knox vs. Oakland. Current law also dictates that the "burden of proof" falls on the taxpayer whenever the legality of fees and assessments is challenged in court. In 1986 Proposition 13 proponents put forth another tax-reform measure, Proposition 62, requiring majority approval for all "general" taxes, such as for law enforcement, and two-thirds approval of all "special" taxes, such as for expansion of a sewage treatment facility. Though intended to apply to all cities, the initiative's scope is limited by legal decision to general-law cities only, and not to charter cities like Los Angeles and San Francisco.

Proposal: Proposition 218 limits local governments' use of fees, assessments and taxes. It stipulates that fees and assessments can only be used for specified purposes and not for projects or services benefiting the general public, such as for public safety or libraries. All new fees and assessments, plus increases in existing ones, must be approved in an election by a majority of property owners. Approximately half of all existing assessments would also be subject to voter approval by no later than July 1, 1997. Assessment district elections would be subject to a proportional voting system, with some property owners' ballots weighing more than others depending upon the assessment each would pay. Proposition 218 further requires that all public agencies and schools pay assessments, and that charter cities abide by Proposition 62's voting stipulations on local taxes. The "burden of proof" regarding legality of assessments and fees also would be reversed, placing the onus on local officials rather than on taxpayers. The legislative analyst estimates an annual loss of $100 million for local governments if Proposition 218 passes.

12a

Arguments for: Proposition 218 is the product of the Howard Jarvis Taxpayers Association and Paul Gann's Citizen Committee -- the organizations founded by and still operating under the names of the godfathers of Proposition 13. They claim this measure will finally stop the "end run" around Proposition 13 by local governments. By mandating all fees and assessments be subject to election, supporters say government officials will no longer be able to disguise tax increases in other forms. They cite a 2400 percent increase in assessments over the past 15 years as proof that local government taxation is out of hand. Supporters insist Proposition 218 will not jeopardize public safety funding since general tax revenues will still be available for such services. Local authorities will need only to convince their electorate that new taxes are really necessary.

Arguments against: Opponents of Proposition 218 include the League of Women Voters of California, the California Congress of Seniors, the California Teachers Association and a bevy of law-enforcement and fire-protection groups. They say the initiative's provisions pose a financial catastrophe for local services, including public safety, education, and libraries. Opponents claim it will grant expanded voting power to large landowners, including those residing out of state, and deny renters the right to vote under the weighted voting system for assessments. They also characterize it as a tax increase measure since it requires publicly-owned entities to pay assessments.

-- Noel Brinkerhoff

These district-by-district analyses are provided by the California Journal.

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The California Online Voter Guide is
a project of the California Voter Foundation.

EXHIBIT 12b

SOUTH BAY

THE IMPLICATIONS OF PROPOSITION 218

THE IMPLICATIONS OF PROPOSITION 218

"THE RIGHT TO VOTE ON TAXES ACT"

ON LOCAL GOVERNMENT FINANCE IN CALIFORNIA

Michael G. Colantuono

Metro Forum Project

Rancho Palos Verdes, California

September 17, 1997

THE HISTORIC EROSION OF LOCAL FISCAL AUTHORITY

1. *Prop. 13.* In 1978, the great tax revolt of California reduced property taxes from a statewide average of 4% of market value to 1% of assessed value, which relates to historic sales prices rather than to market values. In addition to dramatically reducing the amount of property taxes flowing to various local governments, Prop. 13 transferred to the State Legislature the power to allocate property taxes among cities, counties, schools, and other local governments. In the early 1990's the Legislature used this power to shift $3.6 billion from cities, counties and special districts to schools to ease the State's budgetary woes. Proposition 172 returned some of this money to cities and counties (primarily to counties) but required the revenues to be used solely for police services.

2. *Prop. 4.* The Gann Initiative attempted to reduce the size of government by limiting expenditures rather than taxes. Governments may not spend more than the appropriation ceiling -- a formula based on 1978 expenditures adjusted for inflation and population vote -- without voter approval. If that approval is granted, it must be renewed every four years.

b

3. *Prop. 62.* This measure was adopted in 1986 in response to several court rulings construing Prop. 13. It was intended to require voter approval of all local taxes. It was invalidated by several appellate courts between 1986 and 1991. It was largely viewed as a dead letter until the California Supreme Court revived it in December 1995, as discussed below. Prop. 134 was an attempt to restate Prop. 62's rules in the State Constitution, but was rejected by the voters. Prop. 218, discussed below, does incorporate Prop. 62's provisions. As a result, the primary remaining issue under Prop. 62 goes to continuing legality of $300 million in annual revenues derived from taxes adopted in the early 1990's in response to the property tax take-aways discussed above.

4. *Prop. 218.* This measure was adopted in November 1996 and dramatically revised local government finance. In a nutshell, Prop. 218 transfers from local elected officials the power to establish new revenue sources, other than use fees, and requires voter or property owner approval to do so. It can be understood as replacing representative democracy in local government finance with direct democracy.

STATUS OF PROPOSITION 62

Guardino v. Santa Clara County Local Transportation Authority

In December 1995, the California Supreme Court overturned a number of previously decided appellate decisions which had invalidated Proposition 62, an initiative statute that requires voter approval of local general taxes. This created great uncertainty for literally hundreds of millions of dollars of local government revenue from non-voter approved taxes imposed or increased after the adoption of Proposition 62 in November 1986. *Guardino* left unanswered many critical questions, including whether its ruling applies retroactively to previously adopted tax ordinance and what statute of limitations applies to tax challenges.

Statute of Limitations Cases

In cases involving Claremont, La Habra and Pinole, the Los Angeles, Orange County and Contra Costa County Superior Courts sustained demurrers to suits seeking to halt collection of utility users taxes. Each court concluded that such challenges are subject to Code of Civil Procedure ß 338(a), which establishes a three-year period in which to bring "an action upon a liability created by a statute," in this case the statutory provisions of Proposition 62. This issue has been appealed and there is at least some likelihood that an appellate court might decide the statute of limitations issue differently than have these trial courts, so uncertainty on this issue will remain for some time.

Turner v. County of Butte

This case was filed before *Guardino* was decided and the trial court upheld the challenged utility users tax on the basis of the appellate decisions which invalidated Proposition 62. The Fifth District Court of Appeal in Sacramento reversed that decision after *Guardino* was decided. *Butte County* repealed the tax and its voters approved a successor ordinance. Surprisingly, the Fifth District refused to dismiss the case as moot and the case has now been briefed on the issue of retroactivity. Thus, the *Butte County* case is expected to produce the first appellate ruling on whether *Guardino* retroactively invalidates taxes passed without compliance with Prop. 62 during the period when it was widely believed to be unenforceable. *Butte County* does not expect a decision in this case until early 1998 and an appeal to the California Supreme Court may well follow.

Other trial court cases have been filed against a number of cities, including Berkeley, Brawley, Burbank, El Centro, Hawthorne, Martinez, Orange Cove, and San Francisco.

A.B. 1362 (Mazzoni, D-Marin)

In the meantime, renewed efforts will be made to win passage of S.B. 1362, modelled closely on last year's S.B. 1590 (Craven, R-Oceanside; O'Connell, D-Santa Barbara). That measure would determine legislatively that the *Guardino* decision applies only prospectively and does not undermine taxes adopted without voter approval prior to December 14, 1995. It would also establish a shorter statute of limitations for bringing cases based on *Guardino*. If successful, this statute could assist or perhaps preempt the court decision in the *Butte County* case. The bill has passed both houses of the Legislature and is now pending on Governor Wilson's desk.

PROPOSITION 218 - "THE RIGHT TO VOTE ON TAXES ACT"

NEW RESTRICTIONS ON TAXES

Broader Definition of "Special Tax."

Newly enacted Article 13C, Section 1(d) of the California Constitution/ broadens the definition of "special tax" to include:

> "any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund."

Prior to the passage of Proposition 218, state law allowed local government officials to make promises as to uses of the proceeds of a tax, without converting the tax into a special tax and without triggering the two-thirds voter approval requirement, if the taxes were placed in the general fund and were not legally (as opposed to politically) restricted to a specific purpose. Article 13C, Section 1(d) appears to be intended to limit the ability of local governments to tie proposed general taxes to specific public concerns such as law enforcement, parks, libraries, etc., but may prove ineffective in policing the statements elected officials make to their constituents other than those included in the voter pamphlet. Litigation involving two measures on the ballot in Santa Clara County in November 1996 may shed some light on this issue.

"Special Purpose Districts" May Not Impose General Taxes and Must Get Two-Thirds Voter Approval for All Taxes.

Article 13C, Section 2(a) provides in part:

> "Special purpose districts or agencies, including school districts, shall have no power to levy general taxes."

This point may have significant impact on special purpose entities, as special taxes require two-thirds voter approval and have been upheld only occasionally since the passage of Proposition 13. Because the term "special purpose districts," rather than "special districts" is used, this language may apply only to single-purpose agencies and not to multi-purpose special districts. If so, this provision merely restates the rule of Rider v. County of San Diego, 1 Cal.4th 1 (1991).

Constitutionalization of Proposition 62 and Limit on Tax Elections.

Article 13C, Section 2(b) moves Proposition 62's statutory requirement for voter approval of general taxes into the state Constitution and provides in part:

> "The election [to approve a general tax] 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."

As regularly scheduled city council and board of supervisors elections in most cities and counties are held only every two years, this provision obviously limits the flexibility of local government to respond to changes in the economic climate or in the state budget. Note that an election to approve a special tax may be conducted at any time the local government is otherwise authorized to conduct an election. Special taxes imposed under the Mello-Roos Act may continue to be a popular means of financing raw land developments because the developer can cast the only vote that matters on behalf of all the land to be developed.

Validation of 1995-96 Window Period Taxes.

Article 13C, Section 2(c) provides:

> "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 the 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]."

This provision might obviate the need to determine whether or not the Guardino decision retroactively invalidates taxes imposed between January 1, 1995, and December 14, 1995. Thus, the retroactivity issue may be limited to taxes adopted between November 1986 and the end of 1994. The provision authorizes the collection of such taxes if approved by the voters within two years, and may impliedly authorize the collection of those taxes until the tax is defeated or approved at the polls.

This provision also "backdates" the initiative's effective date to January 1, 1995. Retroactive application of the initiative raises significant constitutional issues and may be held unenforceable where it would violate the contracts clause of the federal constitution by impairing revenues pledged for the payment of bonds.

Initiatives on Taxes and Other Revenue Measures.

Article 13C, Section 3 supersedes existing provisions of the state Constitution by expressly authorizing initiatives:

> "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. . . ."

To some extent, this provision constitutionalizes the decision of the Supreme Court in Rossi v. Brown, 9 Cal.4th 688 (1995), which upheld a San Francisco initiative that repealed a tax. It goes further than that, however, as it extends the initiative power to assessments, fees, and charges, which had previously been considered administrative rather than legislative matters and therefore beyond the initiative power. Some bond attorneys view this as the single most significant feature of the initiative in terms of its impact on the ability of local governments to borrow money.

The measure dramatically reduces the number of signatures required to qualify a fiscal initiative from ten percent (10%) of the all registered voters to five percent (5%) of the voters who actually voted in the last gubernatorial election. This could make fiscal initiatives very common. In addition, it could make it difficult to use assessments and fees imposed to finance ongoing maintenance of common area improvements or public infrastructure. Even if the developer consents to such fees or assessments when the development is approved, subsequent purchasers would have the power by initiative to rescind the levies. This would not be true where bonds have issued to pay for physical improvements; it may well be true with respect to maintenance assessments. Thus cities and counties can be expected to rely on CC&R's and Homeowners Associations to finance ongoing maintenance.

The League of California Cities has drafted proposed legislation to clarify this and other issues raised by Proposition 218, in consultation with other local government associations including the Association of California Water Agencies (ACWA), the California State Association of Counties (CSAC), the County Counsel's Association, the California Special Districts Association (CSDA), and the California Association of Sanitation Agencies (CASA). That legislation proposes a new chapter of the Elections Code to clarify and implement the initiative provisions of Prop. 218. It is also possible that the initiative provisions will be clarified by litigation as well. One of the two League-sponsored bills, S.B. 919 (Rainey, R-Walnut Creek) became law on July 1, 1997 as Chapter 39 of the Statutes of 1997, but that bill did not address initiative procedures.

Application of Proposition 62 to Charter Cities.

Before the passage of Proposition 218, Government Code provisions enacted by Proposition 62 required general taxes of cities and counties to be approved by vote of the electorate. It was unclear whether Proposition 62 applied to the state's 91 cities governed by local charters (which include most of the state's largest cities and several smaller cities), although most public attorneys concluded that it did not. Berkeley and San Francisco won trial court rulings on this point. Now, Article 13C, Section 1(b) includes charter cities in the definition of the "local governments" covered by Proposition 218. Therefore, charter cities are now subject to the voter-approval rule and general law cities are unable to adopt charters to avoid those rules. This aspect of Prop. 218 has lead to credit reviews of at least 5 of the state's largest cities since November by credit-rating agencies such as Moody's and Standard and Poors.

NEW RESTRICTIONS ON FEES

Definition of "Fee."

Article 13D, Section 2(e) defines "fee or charge" as:

> "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 a user fee or charge for a property related service."

This definition does not include within the measure non-property-related service fees, rental fees, and regulatory fees, and the initiative expressly excludes development fees./ Instead, it covers fees imposed on property or "as an incident of property ownership," i.e., it covers fees which function much like assessments. It appears intended to prevent a local government from avoiding the assessment and tax rules of the measure by recharacterizing a tax or an assessment as a fee or a charge. Therefore, Prop. 218 applies only to a small class of fees. On the other hand, there is a debate about whether the proposition also applies to utility service fees that are charged on the basis of the volume of the service consumed, such as fees for water, sewer service or refuse collection. The Attorney General has recently concluded that they do not but the courts have yet to address the issue.

The League's legislation does not attempt to clarify this issue because litigation seems inevitable. Therefore, clarification must come from the courts.

Restrictions on "Fees and Charges."

Article 13D, Section 6(b) imposes the following restrictions on fees and charges:

The revenues from the fee or charge may not exceed the funds required to provide the property-related service.

The revenues derived from the fee or charge may not be used for any purpose other than that for which the fee or charge is imposed.

The amount of the fee or charge may not exceed the proportional cost of the service attributable to the parcel on which the fee or charge is imposed. This could restrict the use of "life-line" rates and similar subsidy programs that are financed by user fees.

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. Standby charges must be treated as assessments.

No fee or charge may be imposed for general governmental services (including but not limited to police, fire, ambulance, and library services) where the service is available to the public at large in substantially the same manner as it is to property owners.

There is some doubt as to whether these new rules apply to existing property-related fees and charges or whether they are triggered only when a fee is adopted or increased after July 1, 1997. The Howard Jarvis Taxpayers Association, one of the proponents of Proposition 218, contends that the rules apply to existing fees and this issue is also likely to be clarified only in court.

Definition of "Standby Charges."

"Standby charges," whether characterized as charges or assessments under prior law, are classified as "assessments" by the proposition. The proposition does not define the term "standby charge," but case law provides some guidance. In *Kennedy v. Ukiah*, 69 Cal.App.3d 545, 553 (1977), the Court of Appeal clarified what a standby fee is not and shed light on what such a fee is:

> "Here, the charge is not a `standby' or `immediate availability' charge within this definition, in that the charge is not imposed on an acreage or parcel basis and is not related to `available' or `standby' water service. Rather, it appears to be a surcharge for water use imposed on multiple dwelling units having a master meter. Put another way, the water service is not `standing by' or

> `immediately available' to be connected to the property to be benefitted; it is in fact providing the benefit."

Under *Prop. 218*, standby charges are treated as assessments. Thus, the exemptions for certain assessments will apply to standby charges which also fit the criteria for the exemptions and new or increased standby fees can be imposed consistently with the requirements of Prop. 218. However, it may be politically unlikely that owners of undeveloped property will vote for the imposition of a standby fee to fund a service which, by definition, they do not use.

Mailed Notice, Hearing and Majority Protest Requirements.

Article 13D, Section 6(a)(1) requires mailed notice to affected property owners of:

> "the amount of the fee or charge proposed to be imposed upon each [parcel], 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."

The cost of such notices may be considerable, especially where a fee is proposed to apply to a large number of parcels.

Article 13D, Section 6(a)(2) requires a public hearing not less than 45 days after the notice is mailed and provides in part:

> "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."

Because this rule retains the traditional majority protest rule - participation and protest by an absolute majority of all affected property-owners - it seems unlikely that such protests will often occur.

The League's legislative proposal restricted this procedure to the water, sewer and solid waste fees, including recycling fees, which are exempt from the election requirement applicable to other fees which is described below. The HJTA has indicated its agreement with this proposal. Thus the only consequences of complying with these procedures will be delay, the expense of notice, and political cost of the public hearing.

Voter Approval Requirement.

Voter approval is required 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 that 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."

On the face of Prop. 218, except for sewer, water and refuse fees, both a noticed hearing subject to majority protest and an election would appear to be required. As this seems to make no sense, the League's legislation eliminates the duplicate procedures and requires the noticed public hearing for water, sewer, and trash fees only. The election procedure alone is required for other fees and charges subject to Prop. 218. Those elections can be conducted by mailed ballot in much the way the measure requires for the approval of assessments as discussed below.

THE IMPACT ON ASSESSMENTS

Mailed Notice, Hearing and Majority Protest Requirements.

Article 13D, Section 4(c) requires local agencies to mail notice to all property owners prior to levying any assessment. Mailed notice must include a ballot. Article 13D, Section 4(e) requires a public hearing not less than 45 days after the notice is mailed. At the public hearing, if more returned ballots (weighted according to the assessment to be charged to the property) are against the assessment than in favor of it, the assessment may not be levied.

These provisions override the Brown Act's provision for published notice. They also enable a vocal minority to overrule a silent majority and provide for a method of calculating a majority protest which is inconsistent with existing methods set forth in various assessment acts such as the majority-of-area standard of the Landscaping and Lighting Act of 1972 and the majority-of-registered-voters standard of the Benefit Assessment Act of 1982.

S.B. 919 has eliminated the need to comply with both Prop. 218 and the different notice and protest requirements of the assessment statutes.

No General Benefit Component.

Article 13D, Section 4(a) requires local agencies to distinguish between general and special benefit and assess only for special benefit. Article 13D, Section 4(b) requires the allocation of costs to be supported by a report of a licensed professional engineer. Article 13D, Section 4(f) shifts the burden to local agencies to prove that the amount of the assessment against each assessed parcel is proportional to the special benefit received by the parcel.

These provisions will likely necessitate contributions from the general fund or other sources to pay the portion of the assessment that is attributable to "general benefit." They also will likely result in litigation over what constitutes "special benefit" and what allocation is "proportional." There is very little guidance available from existing case law regarding the distinction between "general benefit" and "special benefit" and that guidance can only come from new litigation, leaving local governments with very little comfort in the interim. The provision shifting the burden of proof will increase the risk that local agencies will lose those lawsuits.

Requirement to Assess Public Property.

Article 13D, Section 4(a) prohibits local agencies from excluding public property from assessments unless they can show by "clear and convincing evidence" that the publicly-owned parcels receive no special benefit. In addition, agencies which are obliged to pay assessments imposed by other agencies have the right to vote on the imposition of the assessment.

This provision very likely abrogates the state-law doctrine of intergovernmental immunity. However, federal agencies can be assessed only if they have entered into leases which obligate them to pay assessments imposed on their landlords or if another exception to the federal doctrine applies. In addition, some existing assessment statutes require an agency which imposes an assessment on another government agency to pay the assessment itself. Agencies which pay assessments will also be able to cast ballots on whether the assessments should be imposed.

Exemptions for Certain Assessments Existing on November 6, 1996.

Article 13D, Section 5 exempts assessments existing on November 6, 1996 which fall into four stated classes. Subsequent increases in exempt assessments must comply with Prop. 218's procedures.

> "(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."

This exemption appears to exempt multi-year assessments levied for maintenance purposes; it does not on its face exempt maintenance assessments which must be levied on an annual basis. S.B. 919 eliminates the need for annual compliance with Prop. 218's majority protest procedures and requires compliance only when an assessment is established for the first time or increased over previously approved rates. It should also be noted that Article 13D, ß 2(f) provides a peculiarly narrow definition of "maintenance and operation."

> "(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."

This exemption exempts an assessment district formed prior to November 6, 1996, at the request of a developer who owns all of the property within the proposed district; it is not available to developers after November 1996. However, developers will be able to rely on Mello-Roos financing, as that statute authorizes special taxes which are affected only by the initiative provisions of Proposition 218 discussed above. The League's proposed legislation, with apparent support from the HJTA, will define "petition" broadly to encompass any written consent to the imposition of an assessment, including the acceptance of conditions of approval of a subdivision or other land use approval. This provision will sharply limit the utility of assessments to finance the ongoing maintenance of public infrastructure created and maintained in the development of raw land.

> "(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."

This exemption expressly protects assessments pledged to repay bonds issued prior to November 6, 1996. Although the Proposition does not expressly protect other forms of indebtedness, such as notes, certificates of participation, etc., those debts will be protected by the contracts clause of the federal Constitution. It is less obvious that the federal contracts clause protects bonds issued after November 6, 1996, although most bond counsel now conclude that it does. S.B. 919 makes this point clear. Thus, developer-approved assessments imposed to finance infrastructure necessary to support development can continue to be used if they are bonded, as the initiative power will be unavailable to undermine those revenue streams until the bonds are paid off. A serious problem remains for financing of ongoing maintenance and without assurance that public services can be funded, cities and counties may be reluctant to approve substantial new residential development which brings new constituents and new demands on local services.

> "(d) Any assessment which previously received majority voter approval from the voters voting in an election on the issue of the assessment."

This exemption appears to exempt all assessments approved by voters prior to November 6, 1996; it does not appear to allow resident taxpayers to overrule a protest by property owners in the future, although some public lawyers argued that a validation election could properly be held up to July 1, 1997. Litigation on that point is now pending. It is also possible that the initiative provisions discussed above will alter this result. The League's draft legislation would make clear that voter approval in an advisory election is sufficient to trigger this exemption. This seems appropriate as there was no authority for a binding election on many assessments imposed prior to the adoption of Prop. 218.

QUESTIONS OF INTERPRETATION

As noted above, a number of the provisions of *Proposition 218* are unclear, undefined or ambiguous and, until the Legislature and courts provide further guidance, it is unclear how these provisions will be interpreted. In predicting how the courts will interpret *Proposition 218*, a few things should be kept in mind. First, Section 5 of the proposition states:

> "The provisions of this act shall be liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent."

This language will likely lead a court to apply the proposition broadly and to interpret its exemptions narrowly.

Second, Jonathan Coupal, Director of Legal Affairs of HJTA, has circulated an annotated copy of the proposition stating his interpretations of a number of areas of ambiguity. While not binding, the opinion of the drafter may be considered by a court in determining the intent of the measure. See, *Carmen v. Alvord*, 31 Cal.3d 318, 331 n.10 (1982), but cf., *C-Y Development Co. v. Redlands*, 137 Cal.App.3d 926, 933 (1982). A copy of that analysis is included in the

League of Cities "Proposition 218 Implementation Guide," which is available from the League's publications department (916-658-8200) for $35.

Finally, no provision of the California Constitution may violate federal law. A number of provisions of *Proposition 218* can be expected to generate litigation regarding their consistency with the federal constitution when those provisions are applied in particular contexts.

Given these uncertainties, it seems likely that the process of clarifying and implementing *Proposition 218* will take years.

KEY PROVISIONS OF PROP. 218

Taxes: Voter Approval Required for All Local Taxes

2/3 for special taxes; 50% for general taxes

Fees: Election for All But Water, Sewer and Trash

Majority Protest Hearing for Others

No use of fees for "general" services

Assessments: Many new restrictions

Probably useless for maintenance

Can be used for capital improvements

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EXHIBIT 12c

The Looming Local Transportation Finance Crisis: Will Prop. 62 & 218 Doom Future Local Funding?

The following appeared in the February, 1998 issue of Metro Investment Report, the insiders' guide to public investment in the region. For subscriptions, back issues or reprints, email msmith@usc.edu, or call (213) 629-9019.

*Public finance attorney **Victor Hsu**, Of Counsel at Fulbright & Jaworksi, reveals a looming problem for California counties that depend on **1/2% sales taxes** to fund their transportation systems. Infrastructure needs are growing as ever. These taxes are sunsetting. And the two-thirds majority requirements codified in **Prop. 62 and Prop. 218** have thrown a serious shadow over these taxes' prospects for seeing the light of day after they sunset. **MIR** is pleased to present the following report from Victor Hsu.*

Traditionally, local transit needs in California have been financed by a combination of federal, State and local revenue sources. In the 1980s, the California Legislature exponentially increased the significance of the local component by giving county residents the option of imposing increased sales taxes within their jurisdictions by majority vote, with the proceeds earmarked for transportation projects. Within a few years, 17 counties had new 1/2% sales taxes, including the counties of Los Angeles, San Francisco, San Diego, Sacramento, Riverside, Santa Barbara and Fresno. The voters of L.A. County actually approved two separate transportation sales tax measures, once in 1980 and again in 1990. Statewide, these sales taxes collectively generate approximately $1.5 billion of revenue each year.

Except for the two taxes levied in L.A. County, these transportation sales taxes share an interesting feature-they will all die. After 20 years of being imposed (or 15 years, or even 10, depending on the county), the taxes simply expire. This sunsetting has already occurred in Santa Clara County. Alameda County's sales tax is the next casualty, with a termination date in the year 2001. Throughout the first decade of the new millennium, the remaining transportation sales taxes will die off one by one. By the end of the year 2010, none will be left standing, with the exception of Los Angeles County's pair. (L.A.'s transportation sales taxes may meet an untimely end, however, if L.A. County Supervisor and MTA Board Member Zev Yaroslavsky has his way, but that is another story for another time.)

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For some of the less populous and less urbanized counties, this sunsetting will pose no problem. The tax revenue raised will have been sufficient to finance their more modest transportation wish lists.

For other counties, the end of the 1/2% revenue stream raises serious concerns, because so much remains to be financed. As populations increase and economic activity expands, it is not surprising to see additional demands placed on transportation infrastructure. Predicting the transit needs of a community over the next few years takes a crystal ball; accurately predicting such needs for a countywide area over the next two decades requires the Delphi Oracle.

As a result of changed circumstances and new requirements, many county transportation commissions and authorities would like to resurrect their 1/2% sales taxes. The problem for these entities is that the rules have changed.

When these sales taxes were originally adopted, the law required approval by a mere majority of county voters. There was a pesky amendment to the California Government Code, known as Proposition 62, requiring majority approval for general taxes and a 2/3 vote for special taxes, but three appellate courts had ruled Proposition 62 to be unconstitutional. Enter the California Supreme Court. In the 1995 case of *Santa Clara County Local Transportation Authority v. Guardino*, 11 Cal.4th 220, the Court ruled that the voter approval requirements of Prop. 62 are indeed constitutional, and invalidated a 1/2% transportation sales tax approved by 54.1% of the voters in Santa Clara County.

The voter approval requirements described in Proposition 62 only have the legal force of a statutory enactment. This changed with the adoption of Proposition 218, the Right to Vote on Taxes Act, approved by California's voters in November, 1996. Proposition 218 effectively elevated Proposition 62's voter approval requirements to constitutional status.

Transportation advocates in Santa Clara County responded to the challenge of Propositions 62 and 218 with a clever and creative ballot measure, which asked voters to approve a sales tax increase for general County purposes. On the same ballot, voters were also asked in a non-binding advisory measure whether they wanted the County to spend the revenue raised by this sales tax increase on transportation projects. Both the sales tax and the advisory measure were approved by a majority but not 2/3 of the voters. The tax was immediately challenged as an invalidly adopted special tax, and the

California Supreme Court will soon decide its legality.

If the Santa Clara procedure receives judicial approval, we can expect it to be copied throughout the State. If it fails, county transportation commissions and authorities wishing to authorize new sales taxes will be faced with the daunting burden of securing 2/3 voter approval. Of the 18 transportation sales taxes previously approved by county voters in California, only the measures in Riverside County and San Benito County received this level of electoral support.

Thus, local transportation finance in California has come full circle. Unless the restrictions of Propositions 62 and 218 can be overcome, it appears that the revenue mix for funding transit projects will eventually revert to the traditional emphasis on State and federal sources.

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EXHIBIT 12d

PROPOSITION 218 WATCHED CLOSELY

California local governments are watching Proposition 218 very closely, one of the measures on the November 5 state ballot. Proposition 218, if passed by the California electorate, would require a majority of voters to approve any increase in general taxes, and it would expand the definition of special taxes which require approval by two-thirds of the voters.

In addition, the proposition would require local elections to confirm, retroactively, any tax increases approved by local governments since January 1, 1995. Proposition 218 also would restrict the authority of local governments to charge property-related fees such as assessments, and it would require the approval of property owners, voting in proportion to the value of the property they own, to pass property-related assessments in the future.

The impact on local governments statewide, such as cities, school districts, and special districts, would be revenue losses of about $100 million a year initially, according to the non-partisan Legislative Analyst's Office which prepared the evaluation for the California ballot pamphlet.

The estimated impact of Proposition 218 on City of Sunnyvale finances could amount to more than $400,000 a year. First, the City approved an increase in the "transient occupancy tax" (TOT or hotel tax) that became effective in mid-1995 and generates approximately $300,000 in revenues for the City per year. This change was supported by the Sunnyvale hotel industry so it could gain an exemption to charging TOT to government employees staying in local hotels. This exemption is common in many cities, and it helped Sunnyvale hotels stay competitive.

The other Sunnyvale revenue that would be affected by Proposition 218 is the assessment on property in the Parking District in downtown Sunnyvale, estimated at $112,000 annually. The Parking District, which has built, operated and maintained downtown parking lots for the benefit of downtown businesses for decades, relieves individual businesses from the need to provide parking separately.

Majority approval, from voters in the case of the hotel tax and from the affected properties in the Parking District for the tax-assessment, would be needed to continue these charges. If approval could not be obtained, the City would be faced with the challenge of reducing its budget for services by that amount.

Proposition 218 is sponsored by the Howard Jarvis Taxpayers Association. Organizations including the League of Women Voters and the League of California Cities are opposed to the proposition.

Voters are encouraged to study their California Ballot Pamphlet that is mailed by the California Secretary of State. For more information, call:

- California Secretary of State (916) 657-2166
- City of Sunnyvale Office of the City Manager (408) 730-7599
- Howard Jarvis Taxpayers Association (For 218) (213) 384-9656
- Citizens for Voters' Rights (Against 218) (714) 222-5438

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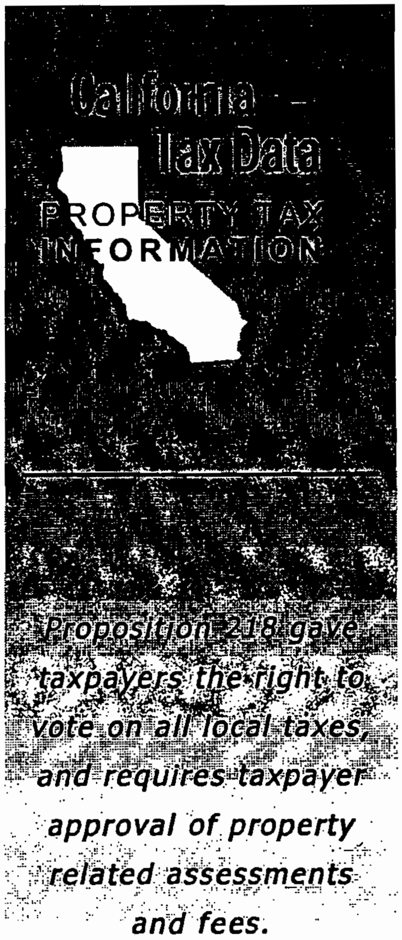
EXHIBIT 12e



What is Proposition 218?

Background

In November 1996, California voters passed Proposition 218, the "Right to Vote on Taxes Act". This constitutional amendment protects taxpayers by limiting the methods by which local governments can create or increase taxes, fees and charges without taxpayer consent. Proposition 218 requires voter approval prior to imposition or increase of general taxes, assessments, and certain user fees.

The Environment Prior to Proposition 218

Proposition 13 dramatically changed the California property tax landscape after its passage in 1978. The result was a severe limitation on ad valorem property taxes (property taxes based on assessed value of property). Consequently, local governments had to look elsewhere to find money to fund public services and improvements. These agencies turned to benefit-based assessments, special taxes and user fees, which were not subject to Prop. 13 limitations. However, this resulted in increasing property tax bills, the main concern that Prop. 13 attempted to control.

Proposition 218 Tax Reform

Prop. 218 radically changes the way in which local governments raise revenues by ensuring taxpayer approval of charges and increases to existing charges. Voters are also given the ability to repeal or reduce charges by voter initiative.

Specific Features of Proposition 218

The primary changes put in place by Proposition 218 are explained below.

1. **Voter Approval on Taxes.** Prop. 218 requires all local governments, including charter cities, to get majority voter approval for new or increased general taxes.

2. **Limits on Use of "General Taxes".** Proposition 218 restricts the use of general taxes, which require majority voter approval, to general purpose governments (i.e. cities and counties). School districts are specifically precluded from levying a general tax.

3. **Stricter Rules on Benefit Assessments.** Benefit assessments by definition must be calculated based on the benefit received by the parcel as a result of the project financed. Prop. 218 created stricter rules for initiating or increasing benefit assessments. Now, an agency must determine the specific benefit the project will have on individual parcels. A general enhancement to property values can no longer serve as the benefit.

4. **Increased Notification and Protest Requirements.** Proposition 218 will require that agencies put all assessments, charges and user fees out to a vote prior to creation or increase. In most cases, the vote will require individual notices be mailed to affected property owners. A formal protest hearing is also required to move forward with the charge or increase.

5. **Restrictions on Use of Fees.** Proposition 218 prohibits local governments from imposing fees on property owners for services that are available to the public at large (like garbage collection and sewer service). In any case, fees charged to property owners may not exceed the cost of providing the service.

6. **Government Owned Property No Longer Exempt.** Proposition 218 requires government agencies to pay their fair share of a benefit assessment, if the property receives benefit from the project or service financed.

7. **Initiative Power To Repeal.** Prop. 218 gives voters the power to reduce or repeal any existing local tax, assessment, or charge through the initiative process.

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EXHIBIT 12f

CALIFORNIA COMMUNITIES PROGRAM
Citizenship
Governance
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UNIVERSITY OF CALIFORNIA

CALIFORNIA COMMUNITY TOPICS

No. 1 May 1997 Human and Community Development, UC Davis, CA 95616

California Community Topics, an occasional publication series of the California Communities Program (CCP), provides useful information to citizens and local leaders about important issues of community governance, leadership, and economic development. The CCP is a statewide unit of the University of California's Division of Agriculture and Natural Resources, with applied research and outreach responsibilities. It is housed by the Department of Human and Community Development, College of Agricultural and Environmental Sciences, at UC Davis. David Campbell is director of the CCP. He may be reached at (530) 754-4328; FAX 752-5855; E-Mail dave.c.campbell@ucdavis.edu.

PROPOSITION 218: How it Works and What it Means

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Context

Approved by California voters in November, 1996, Proposition 218 represents a new approach to limiting local government revenue powers. While prior actions originating with Proposition 13 of 1978 concentrated on taxes, mainly the property tax, Proposition 218 changes the focus to two other revenue sources—assessments and fees. Sponsors of 218 argued that local governments' increasing use of assessments and fees after the 1970s merely substituted other revenue for lost property taxes, constituting an "end run" around Proposition 13.

The changes in local government finances introduced by Proposition 218 are much more subtle and confusing than the blunt property tax restrictions of Proposition 13. They involve definitions of revenue purposes and benefits, and detailed procedures of local government. Uncertainties in meaning and application abound, inviting legislative action and court interpretation.

What follows is a simplified explanation of the key provisions of Proposition 218, based largely on the reports listed in the references. (The accuracy of this information has been reviewed by several state government staff members with expertise in local government finance.)

Taxes, Assessments, Fees

Implicit in Proposition 218 are certain basic differences among these local revenue sources, involving essentially the link between revenue payers and specific benefits.

Taxes (property, sales, business, hotel, utility) are involuntary charges in which there is no direct link between the taxpayers and the degree of benefit provided; the benefits are generally community-wide. Proposition 13 established the distinction between *General* and *Special taxes* based on whether or not the revenue is earmarked for a specific purpose. *Special (earmarked) taxes* require two-thirds voter approval. *General (non-earmarked)* taxes now require simple majority voter approval.

Assessments (for streets sidewalks, street lights, etc.) are involuntary charges levied on particular parcels of property for specific improvements. There is a link between the property and the degree of benefit provided. Parcels subject to a particular assessment are usually located within a benefit assessment district, a geographical unit created just as a funding tool.

Fees (or "service charges" for water use, recreational programs, building permits, development approval, etc.) are voluntary charges for a service or facility provided to all consumers of such services.

Cities and enterprise special districts generally use assessments and fees more than counties, school districts, and property tax-dependent special districts. Assessments currently account for less than 4 percent of total city revenues statewide and only .02 percent of total county revenues. Total city revenues statewide from fees is about 41 percent, and 9 percent for counties. For cities, since the late 1970s, total revenues from assessments and fees have more than quadrupled.

Because of these differences, Proposition 218 affects cities and special districts that depend on fees more than counties and special districts dependent on taxes.

218's Major Provisions

Assessments and fees are treated in similar fashion by Proposition 218, although there are difference in the details of requirements and process. For both types of revenue, the constitutional amendment imposes three new sets of criteria: (1) the definition of what services can be funded by assessments and fees on property; (2) the calculation of costs per parcel; and (3) notification and approval requirements:

Benefits. The purposes of particular assessments and fees are sharply distinguished as to whether or not they provide specific benefits to property. The general rule is that assessments and property-related fees cannot be used to fund programs that do not provide benefits to specific parcels. Eligible programs in the case of assessments include improvements to sidewalks, streets, drainage systems; in the case of fees, they include water delivery, garbage, sewer. Services that are not property related seem to include police, fire, ambulance, libraries.

Calculations. For each parcel receiving a benefit from an assessment or service, a local government must calculate the proportionate share of the total cost to all parcels. The calculations for assessments must be prepared by *professional engineers.*

Approval. New notification and election procedures are required for the approval of new assessments and property-related fees or increases in existing assessments and fees. For assessments, this includes a mail ballot to all affected property owners and required approval of property owners representing at least 50 percent of the *total assessment value.* In the case of fees, if the proposed fee or increase is not rejected by a majority of property owners in written protests, it needs *approval in an election by either (a) a majority of property owners, or (b) two-thirds of all voters.* Property-related fees for water, sewer and refuse collection do not require voter approval.

Other provisions of Proposition 218 include:

Conformity. Local governments must bring existing assessments and property-related fees into conformity by July 1, 1997.

General Taxes. Majority voter requirement for the approval of general taxes is affirmed. Local governments must obtain, by November, 1998, approval for general taxes imposed in 1995 and 1996 that were not voter reviewed at that time.

Initiative. All taxes, assessments, and fees are subject to the local initiative process, with the possible exception of revenue streams used to repay bonds.

Charter Cities. Required majority voter approval for general taxes is extended to charter cities.

Further Clarification and Interpretation

The language of Proposition 218 most certainly will undergo court review and interpretations and legislative clarification. Among its uncertainties are the definitions of "special" versus "general" benefits for assessments, the meaning of "property-related" as applied to fees and the voting eligibility of renters.

Long-Term Consequences

Proposition 218 adds to the fundamental changes in the funding and control of California local government that were initiated by Proposition 13. In the long-term, there are these changes in priorities, power, procedures, and costs:

• Further fragmentation of the funding system for local government programs, distinguishing between classes of taxpayers and benefits, and moving away from the communitywide (or "common pool") concept of government services and finances.

• Harder to fund programs that benefit "people" or communities generally.

• Costly procedural requirements for local government.

• Increase in the power of property owners, especially owners of large and high value properties.

• Added local government borrowing costs, as interest rates on bonds increase because of lender perceptions of higher risk.

• Further shift from representative to direct democracy, from elected decision makers to voter majorities and extra-majorities.

• More state control over local government and community affairs, especially as the legislature, governor and the courts are called upon to clarify local fiscal rules.

References

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EXHIBIT 12g

California Online Voter Guide ★ General Election 1996 ★

California Ballot Measures

Introduction to the ballot measures - CVF's brief and easy-to-read summaries of the propositions.

California Journal Analyses - a more in-depth look at the 15 ballot measures.

CVF proposition pages - with fiscal summaries, what a yes/no vote means, links to campaign web sites and contact information.

- Prop. 204 - water bond
- Prop. 205 - incarceration facilities
- Prop. 206 - veterans' bond
- Prop. 207 - sponsor: trial lawyers
- Prop. 208 - sponsor: Common Cause
- Prop. 209 - (also known as CCRI, the "California Civil Rights Initiative")
- Prop. 210 - sponsor: labor groups
- Prop. 211 - sponsor: San Diego attorney Bill Lerach
- Prop. 212 - sponsor: CalPIRG
- Prop. 213 - sponsor: Insurance Commissioner Chuck Quackenbush
- Prop. 214 - sponsor: labor groups, Children Now
- Prop. 215 - sponsors: AIDS activists and health care professionals
- Prop. 216 - sponsors: nurses, Harvey Rosenfield
- Prop. 217 - sponsor: California Tax Reform Association
- Prop. 218 - sponsor: Howard Jarvis Taxpayers' Association

CVF's Introduction to the ballot measures

On November 5, millions of California voters will head to the polls to decide the fate of fifteen measures covering a wide array of important public issues - affirmative action, drugs, health care, prisons, water, campaign finance practices, legal practices, taxes - many of us are simply overwhelmed at the multitude and complexity of choices we are being asked to make. Feeling bewildered? Don't worry - you're not alone. In fact, a Field Poll taken in September found that nine out of ten likely California voters had no idea what proposition 218 was about.

We'll start at the beginning: there's fifteen measures in all, starting with Proposition 204 and ending with Prop. 218. Many of the initiatives deal with the same subjects. Here's the rundown:

Bond measures:
- Prop. 204 - water bond
- Prop. 205 - incarceration facilities
- Prop. 206 - veterans' bond

Legal practices:
- Prop. 207 - sponsor: trial lawyers
- Prop. 211 - sponsor: San Diego attorney Bill Lerach
- Prop. 213 - sponsor: Insurance Commissioner Chuck Quackenbush

Campaign finance practices:
- Prop. 208 - sponsor: Common Cause
- Prop. 212 - sponsor: CalPIRG

Affirmative action:
- Prop. 209 (also known as CCRI, the "California Civil Rights Initiative")

Minimum wage:
- Prop. 210 - sponsor: labor groups

HMO Regulation:
- Prop. 214 - sponsor: labor groups, Children Now
- Prop. 216 - sponsors: nurses, Harvey Rosenfield

Medical Marijuana:
- Prop. 215 - sponsors: AIDS activists and health care professionals

Taxation:
- Prop. 217 - sponsor: California Tax Reform Association
- Prop. 218 - sponsor: Howard Jarvis Taxpayers' Committee

These summaries are intended to provide you with a brief introduction to the measures and issues at stake in this election - we strongly suggest you research these measures further. At the end of each summary is a link to CVF's web page for each proposition - there you will find all kinds of additional information, such as what a "yes" or "no" vote means, a financial analysis, the Attorney General's summary, the California Journal's full analysis, material from the Secretary of State's ballot pamphlets (such as the text and pro/con arguments), campaign contact information and links to ballot measure web sites.

There is a rich and exciting variety of ballot measure web sites available on the Internet this Fall. We have linked to all the sites we could find, and we're still looking for more, so if you know of any, please let us know.

Bond Measures

If you're like most Californians, you probably have a hard time keeping track of how much the State of California is already in the hole for past bond measures. Fortunately, the Secretary of State provides An Overview of State Bond Debt. This overview tells us that bond financing is a type of long-term borrowing used to raise money for specific projects - projects that are typically used for many years, such as schools and prisons. The expensive cost of such projects makes it difficult to pay for them all at once, so the state finances them by selling bonds to investors. The state then must pay back the bond plus interest. We currently have a bond debt of $20.2 billion.

Prop. 204. This water bond, if passed, will result in the most sizable investment in our state's water infrastructure since the Central Valley Project undertaken during Pat Brown's administration, which facilitated the transfer of water from Northern California to Southern California's growing communities. Prop. 204 would pay for $995 million worth of water projects, most of which would be in the Bay-Delta region, which is considered to be California's most significant source of water, providing the drinking water for 22 million Californians. Those projects will cost an additional $776 million in interest over 25 years. Prop. 204 originated as a legislative measure sponsored by an alliance of business, water and environmental groups, including the Association of California Water Agencies, California Chamber of Commerce and the Environmental Defense Fund; the Libertarian Party of California signed the ballot pamphlet argument in opposition. Go to Prop. 204 web page

Prop. 205. Ever since the passage of the "three strikes" law, there has been a growing need for incarceration facilities - county jails, prisons and juvenile detention centers. Prop. 205, which originated as a legislative measure would provide $700 million to pay for incarceration facilities. One purpose of these new facilities is to help relieve the overcrowding in county jails caused by an increase in the number of offenders who are awaiting their chance to argue in overcrowded courts against being charged with another "strike". In fact, county jails in California are so overcrowded that federal court orders have been issued to 27 counties, requiring them to reduce the overcrowding, causing the early release of inmates. This $775 million bond will cost an additional $550 million in interest over the next 25 years, and is supported by law enforcement groups such as California State Sheriffs' Association, California Police Chiefs Association and the California District Attorneys' Association; the Libertarian Party of California submitted ballot arguments in opposition to this measure. Go to Prop. 205 web page

Prop. 206. This measure would authorize the state to sell $400 million in bonds to help provide farm and home loans to California veterans. The loans would be administered through the Cal-Vet program, established in 1921, which has provided assistance with over 400,000 home and farm loans for military veterans. This particular bond is expected to finance about 2,000 loans to California veterans. Prop. 206 originated as a legislative measure, and is supported by veterans and realtors groups; the Libertarian Party of California argues against this measure in the state ballot pamphlet. Go to Prop. 206 web page

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Initiatives

Prop. 207. This measure is a casualty of an initiative war from the last election. Do you remember Props. 200, 201 and 202? These were initiatives on the Primary ballot sponsored by business interests who were trying to limit so-called "strike suits", cap attorneys' contingency fees (these are payments to attorneys that are based on a percentage of any final settlement) and institute a system of no-fault auto insurance. The three initiatives were fought and defeated by tort lawyers. Prop. 207 was written in the heat of the Primary battle, and sought to blunt the impact of Prop. 202, which would have limited contingency fees. This initiative would prevent the government from limiting contingency fees. Opponents say Prop. 207 is an attempt by trial lawyers to protect their high fees. Go to Prop. 207 web page

Prop. 208. Sponsored by California Common Cause, this is one of two initiatives on the ballot dealing with campaign finance practices. Prop. 208 seeks to limit the influence of money in California politics in several ways. First, the measure would impose a $250 contribution limit for most state races. It would also establish voluntary spending limits (the only the kind the courts have found to be constitutional), and would encourage participation by doubling the contribution limit for those candidates who agree to the spending limit. Prop. 208 also bans transfers between politicians, establishes aggregate limits of $25,000 per donor or committee, along with a whole host of other mechanisms designed to restrict the influence of money in state and local politics. Other supporters include United We Stand America, the League of Women Voters and AARP. Opponents - primarily CalPIRG, the backers of the competing initiative, Prop. 212, say this measure doesn't go far enough. Go to Prop. 208 web page

Prop. 209. This measure, also known as the "California Civil Rights Initiative" (CCRI for short), would eliminate state and local government programs that give "preferential treatment" on the basis of sex, race, color, ethnicity, or national origin - in effect, affirmative action programs in the areas of education, public employment and contracting. This initiative represents one of the most significant attempts to undo affirmative action ever made, and is being closely watched throughout the country. Leading proponents include UC Regent Ward Connerly, Governor Pete Wilson, and Stanford University professor Glynn Custred. Opponents include women, minority and civil rights groups, and individuals such as Rosa Parks and Colin Powell. Go to Prop. 209 web page

Prop. 210. This measure would gradually raise the state minimum wage from $4.25 per hour to $5.75 per hour. Here's the history: California's minimum wage was raised to the present level in 1988. A federal wage increase was recently passed by Congress, which will raise the minimum wage to $5.15 per hour by 1998. Approximately two million, or one-sixth, of California's 13 million workers earn less that $5.75 per hour. This measure is sponsored by a coalition of labor unions and religious and community organizations including the California Labor Federation, the California Council of Churches and the League of Women Voters. Opponents include small-business organizations, the California Chamber of Commerce and the National Federation of Independent Businesses. Go to Prop. 210 web page

Prop. 211. This initiative grew out last year's congressional overhaul of securities litigation law. The new federal law makes it more difficult for shareholders to file lawsuits alleging corporate stock fraud. The new law governs only federal lawsuits, however, and securities cases can be brought to either state or federal courts. Prop. 211 ensures that the state courts remain an option for such lawsuits. This initiative is often referred to as the "Lerach Initiative", so named for Bill Lerach, a San Diego attorney who is leading the fight in support of Prop. 211, along with other plaintiffs' lawyers. Opponents include the same Silicon Valley-based business interests that backed Props. 200, 201 and 202 in the March Primary. Go to Prop. 211 web page

Prop. 212. The second initiative on the ballot that deals with campaign finance practices, this one is supported by CalPIRG. Like Prop. 208, Prop. 212 seeks to limit the influence of money in California politics by enacting several new campaign finance provisions. Prop. 212 would impose a contribution limit of $100 for most state and local candidates, and also seeks to establish mandatory spending limits for state races. This initiative would require candidates to raise at least 75 percent of their contributions from within their district, and establishes aggregate limits per year per donor. Opponents - primarily Common Cause and other supporters of the competing initiative - say the initiative is flawed because it repeals existing bans on gifts and honoraria to state lawmakers. Go to prop. 212 web page

Prop. 213. This initiative would limit the ability of uninsured or drunk drivers to sue after being in an auto accident - specifically, these types of drivers could not go for the potentially big-money "non-economic" damages such as pain and suffering. Prop. 213 is sponsored by Insurance Commissioner Chuck Quackenbush, who argues that drunk drivers and the uninsured cost law-abiding policyholders millions of dollars every year. Opponents, including Harvey Rosenfield of Prop. 103 fame, say Prop. 213 will prevent uninsured motorists from winning even medical or lost-wages damages, since many contingent-fee lawyers will refuse to take their cases without the promise of higher non-economic damage awards. Go to Prop. 213 web page

Prop. 214. There are two initiatives on the ballot dealing with HMO regulation. Both are supported by health care industry workers, who split into two camps because of a disagreement over funding mechanism details. Prop. 214 establishes several requirements for the operation of health care businesses designed to prevent "the bottom line" from influencing health care decisions made by HMOs. The measure is supported by a coalition of groups, including Children Now, California Federation of Teachers, and the United Cerebral Palsy Association. Opponents, including the California Chamber of Commerce and the California Taxpayers Association, argue the provisions of Prop. 214 will dramatically raise the cost of health care insurance. Go to Prop. 214 web page

Prop. 215. This measure would allow for the cultivation or possession of marijuana for medicinal purposes. Specifically, Prop. 215 would exempt patients and "defined caregivers" from criminal laws that otherwise prohibit marijuana possession or cultivation. The measure provides for the use of marijuana when a physician has concluded that the individual's health would benefit in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migrane or "any other illness for which marijuana provides relief". Prop. 215 is supported by physicians and nurses, and opposed by law enforcement groups, who call Prop. 215 a "cruel hoax" that will legitimize widespread use of marijuana in California. Go to Prop. 215 web page

Prop. 216. The second of the two HMO regulation initiatives, this one can be distinguished from the other by its primary backers, the California Nurses Association and Harvey Rosenfield, along with other health care professionals and consumer groups, who, like the Prop. 214 proponents, are worried about the quality of health care being reduced because of HMO concern for the "bottom line". A significant difference is that Prop. 216 imposes new taxes on some health-care businesses and individuals, which would be used to set up a new "Public Health and Preventive Services Fund". Prop. 216 is opposed by the same coalition that is opposing Prop. 214. This group, called Taxpayers Against Higher Health Costs, says the new tax will increase health care costs. Go to Prop. 216 web page

Prop. 217. This "tax the rich" initiative would return California's top income tax brackets to ten and eleven percent. Here's the history: beginning in 1973, California's top income earners were taxed at a rate of ten or eleven percent. In 1987, the top tax rate was dropped to 9.3 percent, in accordance with the federal government's 1986 tax overhaul. Then, in 1991, the state's recession caused state revenue shortages, which led the Governor and Legislature to enact a temporary increase in the top tax rate - for five years, the rate would return to the ten and eleven percent rates. Now, it's 1996, and the temporary increase has expired. Prop. 217's main proponent, the California Tax Reform Association, would instead like to see the tax continue. If enacted, Prop. 217 will tax individuals with more than $100,000 in taxable income at a rate of ten percent; those with $200,000 or more in taxable income will be taxed at a rate of eleven percent. Other supporters of this measure include the California Federation of Teachers, Peace Officers Research Association, and the League of Women Voters. Opponents include the California Taxpayers Association and the National Federation of Independent Business. Go to Prop. 217 web page

Prop. 218. In 1978, California voters passed Proposition 13, which requires local governments to obtain voter approval before implementing new taxes. But Prop. 13 did not prohibit the creation of special districts designed to assess private property owners for specific services and projects, such as parks, fire protection, libraries and street lighting. In fact, since the passage of Prop. 13, California has experienced a rapid growth of special districts. Now the proponents of Prop. 13, the Howard Jarvis Taxpayers' Association and Paul Gann's Citizens Committee, are asking voters to limit local governments' use of fees, assessments and taxes. Specifically, Prop. 218 would require that all new fees, and many existing ones, must be approved in an election by a majority of property owners, and assessment district elections would be subject to a proportional voting system where property owners' ballots would be weighed according to the size of the assessment each would pay. This measure is opposed by the League of Women Voters of California, the California Congress of Seniors, the California Teachers Association and many law-enforcement and fire-protection groups. Go to Prop. 218 web page

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Much of the material in these summaries was compiled from the California Journal's Ballot Book, written by Noel Brinkerhoff, Sigrid Bathen, Kathleen Les, A.G. Block and John Borland. This page was compiled and edited by Kim Alexander of the California Voter Foundation.

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EXHIBIT 12h

California Online Voter Guide ★ General Election 1996 ★

Proposition 218

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

Initiative Constitutional Amendment.

Summary: Limits authority of local governments to impose taxes and property-related assessments, fees, 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.

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. Comparable reductions in spending for local public services.

A YES vote on this measure means: Local governments' ability to charge assessments and certain property-related fees would be significantly restricted. Spending for local public services would be reduces accordingly. Many existing and future local government fees, assessments, and taxes would be subject to voter-approval.

A NO vote on this measure means: Local governments could continue to collect existing property-related fees, assessments, and taxes to pay for local public services. Local governments would have no new voter-approval requirements for revenue increases.

The State Ballot Pamphlet, published by the Secretary of State, features the text, fiscal analysis, and pro/con arguments.

■ ■ ■

Official Contact Information

Proponents:	Joel Fox Richard Gann Lee A. Phelps (213) 384-9656
Contact in Support:	Howard Jarvis Taxpayers Association, The Right to Vote on Taxes Act Yes on Prop. 218 621 S. Westmoreland Avenue, Suite 202 Los Angeles, CA 90005 (213) 384-9656
Contact in Opposition:	Citizens for Voters' Rights 2646 DuPont Drive, Suite 20-412 Irvine, CA 95612 (714) 222-5438

■ ■ ■

Web Sites

Supporters:	None available to date.
Opposition:	Citizens for Voters' Rights Stone & Youngberg's Analysis of Proposition 218
Neutral:	None available to date.

■ ■ ■

This initiative was placed on the ballot through petition of the voters.
Source information for this material is available.
Web site additions and corrections can be made by email.

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California Online Voter Guide ★ General Election 1996 ★

BALLOT MEASURES
SOURCES OF INFORMATION

Summary:	Written by the Attorney General's Office
Fiscal Analysis:	Researched and written by the Legislative Analyst's Office
What a yes vote means, what a no vote means:	Written by the Legislative Analyst's Office
Contact in support and opposition:	Compiled by the Secretary of State's Office
Web site links:	Compiled by the California Voter Foundation

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EXHIBIT 12i

Citizens for Economic Progress
4901 Birch Street
Newport Beach, CA 92660

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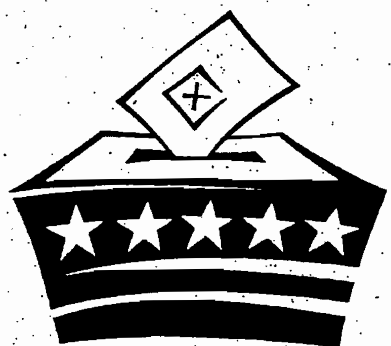

STATE INITIATIVES SUMMARY

NOTICE TO VOTERS — This document was prepared by the California Ballot Pamphlet, a project of Citizens for Economic Progress, not an official political party organization. Appearance in this mailer does not necessarily imply endorsement of others in the mailer. Appearance is paid for and authorized by each candidate and ballot measure which is designated by an *. Prepared and distributed by the California Ballot Pamphlet, a project of Citizens for Economic Progress, 4901 Birch Street, Newport Beach, CA 92660.

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218

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

SUMMARY OF KEY PROVISIONS

- Grants corporations and large property owners more voting power than homeowners in local tax assessment and fee elections.
- Eliminates general assessment funding for police, fire and emergency medical services.
- Requires school districts to pay property assessment taxes and fees.

Fiscal Impact on Government Agencies, Jobs and the Economy

- Tens of millions of dollars in new yearly property assessment and fee costs for local school districts.
- 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 police, fire, emergency medical, elderly and disabled services.

THE EFFECT OF YOUR VOTE

❑ **YES. A YES VOTE WOULD:**

- Change Proposition 13 to create a new "weighted voting" system which gives large property owners more votes in local tax assessment and fee elections.
- Prohibit renters from voting and allow property owners who are not voters (including foreign citizens) the right to vote in local tax elections

❑ **NO. A NO VOTE WOULD:**

- Leave all Proposition 13 protections intact including:
  - one man, one vote in property tax elections.
  - a majority vote to raise general taxes.
  - a two-thirds vote to raise special taxes.

WHO SUPPORTS AND OPPOSES THIS MEASURE

Supporters

- Joel Fox (proponent)
- Lee Phelps

Opponents

- League of Women Voters
- California Police Chiefs' Assn.
- California Fire Chiefs' Assn.

RECOMMENDED VOTE ⟶ NO

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SUMMARY OF VOTING RECOMMENDATIONS
VOTE TUESDAY, NOVEMBER 5

Tear off and take this to the polls.

? indicates that there is no voting recommendation on that measure.

PROP. No.	TITLE	VOTE
204*	Safe, Clean, Reliable Water Supply Act.	YES
205	Youthful and Adult Offender Local Facilities Bond Act of 1996.	YES
206	Veterans' Bond Act of 1996.	?
207*	Attorneys. Fees. Right to Negotiate. Frivolous Lawsuits. Initiative Statute.	NO
208	Campaign Contributions and Spending Limits. Restricts Lobbyists. Initiative Statute.	?
209	Prohibition Against Discrimination or Preferential Treatment by State and Other Public Entities. Initiative Constitutional Amendment.	?
210*	Minimum Wage Increase. Initiative Statute.	NO
211*	Attorney-Client Fee Arrangements. Securities Fraud. Lawsuits. Initiative Statute.	NO
212	Campaign Contributions and Spending Limits. Repeals Gift and Honoraria Limits. Restricts Lobbyists. Initiative Statute.	?
213	Limitation on Recovery to Felons, Uninsured Motorists, Drunk Drivers. Initiative Statute.	?
214*	Health Care. Consumer Protection. Initiative Statute.	NO
215	Medical Use of Marijuana. Initiative Statute.	NO
216*	Health Care. Consumer Protection. Taxes on Corporate Restructuring. Initiative Statute.	NO
217*	Top Income Tax Brackets. Reinstatement. Revenues to Local Agencies. Initiative Statute.	NO
218*	Voter Approval for Local Government Taxes. Limitations on Fees, Assessments, and Charges. Initiative Constitutional Amendment.	NO

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EXHIBIT 13

A Planner's Guide to Financing Public Improvements

State of California
Pete Wilson, Governor

GOVERNOR'S OFFICE OF PLANNING AND RESEARCH • STATE OF CALIFORNIA •

Governor's Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814
916-445-0613

Lee Grissom, *Director*
Antero Rivasplata, *Author*
Tom Pace, *Planning Intern*

June 1997

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INTRODUCTION

California is often looked upon as a leader in innovative methods for financing new public infrastructure and programs. The citizens' "taxpayer revolt" of the late 1970's, represented by the twin measures of Proposition 13, the property tax limitation initiative, and the "Gann limit" on governmental appropriations, relieved many landowners of a property tax burden that they considered onerous. Once primarily dependent on property tax revenues to fund public works facilities, as well as other programs, local governments and school districts have sought alternative methods for raising funds to finance needed public works projects.

Today, local government relies upon a mixture of old and new procedures for raising revenue. Property taxes still do their part. However, revenue sources that were once considered minor, such as special taxes and benefit assessments, are becoming increasingly common. Impact fees and leaseback agreements are at the crest of a "new wave" of alternative financing mechanisms.

In November 1996, California voters enacted Proposition 218, a Constitutional amendment which "protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent." Proposition 218 now requires voter approval prior to imposition of general taxes, assessments, and certain user fees. It radically changes the way in which local government, including charter cities, raises revenues. From now on, the process will be slower, the overhead costs will be greater, and, with the new ability of the electorate to repeal or reduce taxes, assessments, fees, and charges by initiative, there will be less certainty of a continuous revenue stream.

This paper has been extensively revised to reflect the changes made by Proposition 218. The new discussions note where there are uncertainties or ambiguities in the language of the measure. Existing statutes which appear to conflict with the provisions of Proposition 218 are also noted where possible. For the reader's convenience, the full text of Proposition 218 can be found in the Appendix.

Legislation intended to clarify Proposition 218 is expected to be introduced in 1997. And, as time passes, the courts will undoubtedly be called upon to interpret Proposition 218's intricacies. When new legislation or legal interpretations become available, we will update this paper.

At this time, the best single analysis of Proposition 218 and its impacts is *Understanding Proposition 218* written by the California Legislative Analyst's Office. Interested readers may obtain a copy from the Legislative Analyst at 925 L Street, Suite 1000, Sacramento, CA 95814 (916/445-6442) or from the Legislative Analyst's internet site at: http://www.lao.ca.gov. Additional analyses are listed in the Bibliography.

Ensuring that new development will be provided with adequate infrastructure and services is a primary consideration of local government. *A Planner's Guide to Financing Public Improvements* describes current statutory financing options available to California communities. Its primary purpose is to provide city and county planners with a general discussion of methods of public works financing that do not rely on state funds.

A Planner's Guide to Financing Public Improvements is only an introduction to the subject of local government finance. It is not intended to be a detailed text on any of these financing alternatives and is not an endorsement of any particular method.

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A Planner's Guide to Financing Public Improvements

Chapter 1

General Taxes

A general tax is "any tax imposed for general governmental purposes." (Section 1, Article XIII C, California Constitution). This does not include any tax imposed for specific purposes which is placed into a general fund (now defined as a "special tax" pursuant to Proposition 218). This clearly means that a special purpose agency such as a transportation authority can no longer impose general taxes, but instead is limited to special taxes requiring two-thirds majority voter approval.

The power to tax is not inherent. It "comes from the Legislature through its enactment of general laws which enable the local governing body to collect the taxes specified in those general laws" (*California Building Industry Association v. Newhall School District, etc. et al.* (1988) 206 Cal.App.3d 212). The ability of the Legislature to authorize local taxes is in turn limited by the State Constitution. Charter cities are an exception to this rule; their charters give them the power to levy taxes, as limited by the State Constitution.

Proposition 13 placed a limit on the revenues that cities, counties, and special districts could raise from ad valorem property taxes. In the years following its passage, local governments turned to alternative methods of taxation to recoup the reduction in revenues. Cities rediscovered business license taxes (Government Code section 37101), transient occupancy taxes (Rev. and Taxation Code section 7280), and utility user taxes to replace reduced general revenues. Counties, pursuant to SB 2557 (Chapter 466, Stats. 1990), have similar powers. In the following section on utility user taxes, references to "city" should be construed to mean city or county.

Before proposing any new or increased general tax, and prior to the public hearing at which the proposed tax is to be considered, the legislative body must conduct at least one public meeting at which testimony regarding the proposal will be allowed. Public notice of the meeting and the hearing must be provided, at the same time and in the same document, at least 45 days in advance of the hearing. Information contained in the notice must include the amount or rate of the tax, the activity to be taxed, the estimated annual revenue resulting from the tax, the method and frequency of collection, the dates, times, and locations of public meeting and hearing, and the name and number of a contact person within the agency proposing the tax or tax increase. The joint notice of the meeting and hearing must be published for three weeks in a newspaper of general circulation and mailed directly to those who have requested notice. There must be at least ten days advance notice of the public meeting, and the public hearing shall not be held less than seven days after the meeting. (Government Code section 54954.6)

Proposition 62

In 1986, California voters approved Proposition 62, an initiative measure aimed at closing the *Farrell* loophole (see Government Code section 53720 et seq.). The drafters of Proposition 62 intended that all proposed general taxes be subjected to a vote. Under its provisions, the local city council or board of supervisors, by 2/3 vote of its members at a public hearing, may place a general tax proposal on the jurisdiction-wide ballot. Approval of the tax requires affirmation by a simple majority of the electorate. The provisions of Proposition 62 apply retroactively to all general taxes adopted after July 31, 1985. Local jurisdictions were given until November 15, 1988 to gain voter approval of taxes levied during this "window period" (Government Code section 53727(b)).

From its inception, Proposition 62 has been a source of controversy. Prior to its adoption, the State Legislative Analyst and a southern California superior court each concluded that because it is a statutory (rather than constitutional) enactment, Proposition 62 does not apply to charter cities (which obtain their taxing powers from the State Constitution rather than from statute) to the extent that it contradicts the city charter.

Various Court of Appeal decisions after passage of Proposition 62 held that the measure unconstitutionally limited the ability of cities and counties to levy general taxes (*City of Westminster et al. v. County of Orange et al.* (1988) 204 Cal.App.3rd 623; *City of Woodlake v. Logan* (1991) 230 Cal.App.3rd 1058). However, in 1995 the constitutionality of Proposition 62 was vigorously affirmed by the 5-2 opinion of the California Supreme Court in *Santa Clara County Local Transportation Authority v. Guardino (Howard Jarvis Taxpayers Assoc.)* 11 Cal.4th 220. Although the facts of this case relate primarily to the "special tax" provisions of Proposition 62, the Court was clear in its support for the measure's applicability to general taxes as well. The Court majority specifically disapproved the interpretation set forth in the *City of Woodlake* decision.

Proposition 218 has enshrined the Court's direction in *Guardino*. In cities, counties, and charter cities, general taxes require electoral approval.

Proposition 218

In November 1996, voters enacted Proposition 218, a Constitutional amendment intended to close the so-called Proposition 13 loopholes relative to excise taxes, benefit assessments, and fees, and to settle arguments over the applicability of Proposition 62, the voting requirement for general taxes. Proposition 218 added Articles XIII C and XIII D to the California Constitution. Pursuant to section 1 of Proposition 218, it is to be known as the "Right to Vote on Taxes Act." Proposition 218 both controls how general taxes are levied and requires certain previously levied general taxes to be ratified by voters.

Proposition 218 reduces all taxes to either general taxes or special taxes. It defines a general tax as "any tax imposed for general governmental purposes." A special tax is "any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund." No special district (the definition of which includes school districts) may impose a general tax. By virtue of their specific purpose, taxes imposed by a special district are defined as special taxes. Charter cities, who had successfully argued that the statutory initiative Proposition 62 did not require them to submit general taxes to popular vote, now lose that argument to

Proposition 218's constitutional amendment.

No local general tax may be imposed, extended, or increased until it has been submitted to and approved by a majority of the voters in the jurisdiction. Tax proposals can only be considered at scheduled general elections, unless the governing body of the city, county, or special district unanimously votes to place the question on the ballot at a special election.

Proposition 218 requires that any general tax imposed, extended, or increased since January 1, 1995 without benefit of voter approval must be placed on the ballot and ratified by November 5, 1998. This includes general taxes imposed by charter cities. Local jurisdictions must cease imposing any such tax that is not ratified by that date. In addition, Proposition 218 empowers voters within the jurisdiction to reduce or repeal any tax by initiative.

Summary of Proposition 218's Major Points

- Proposition 218 is a Constitutional amendment. It supersedes any conflicting statutory law.
- Proposition 218 applies to all local government agencies, including charter cities. It does not apply to state agencies.

General and Special Taxes (Article XIII C, California Constitution)

- No general tax may be imposed, extended, or increased without first being approved by a majority of the jurisdiction's voters. A general tax must be considered at a general election. Any other scheduling of the vote requires unanimous approval of the agency's governing board.
- All taxes imposed by any local government are deemed to be either general taxes or special taxes. "Special tax" includes any tax imposed for specific purposes which is placed into a general fund. Special districts can only impose special taxes, not general taxes.
- Any general tax imposed on or after January 1, 1995 which was not subjected to voter approval must be placed before the voters for ratification by November 5, 1998. Any tax not ratified by the voters is repealed.
- General and special taxes can be reduced or repealed through the initiative process.

Assessments and Fees (Article XIII D, California Constitution)

- Existing laws relating to development impact fees are not affected by Proposition 218.
- Benefit assessments and "property related fees and charges" cannot be imposed without prior voter approval. Property owners within the area subject to a proposed benefit assessment must be mailed ballots, a public hearing must be held, and affirmative ballots must be received from a weighted majority of the property owners before a benefit assessment can be imposed. No property related fee or charge may be imposed until the fee or charge is submitted to and approved by a majority of the affected property owners or, alternatively, two-thirds of the residents of the affected area.
- The definition of the "special benefit" for which an assessment may be levied is "a particular and distinct benefit over and above general benefits conferred on real property or to the public at large." General enhancement of property value does not constitute a special benefit.

- Assessments must be proportional to the particular special benefit conferred on each affected parcel. Only special benefits are assessable; any general benefit conferred on parcels must be identified and excluded from the assessment. Assessments must be imposed on benefiting local, state, and federal government property.
- Except for assessments securing bonded indebtedness, assessments previously approved by voters, and assessments financing capital costs, operations, or maintenance of sidewalks, streets, sewers, water, flood control, drainage systems, or vector control, assessments existing as of November 6, 1996 must comply with Proposition 218 by July 1, 1997 or be repealed.
- "Fee or charge" is defined as 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. This is to include user fees and fees for property related services.
- No fee or charge may be imposed for a service that is not used by or immediately available to the property owner. So called "standby charges" are now classified as assessments.
- No fee or charge may be imposed for general governmental services such as police, fire, ambulance, or library services where the service is substantially as available to the public-at-large as it is to the property owners being charged.
- Fees and charges cannot exceed the proportional cost of the service attributable to the parcel. Further, revenues from the fee or charge cannot exceed the funds required to provide the property related service.
- Fees, charges, and assessments can be reduced or repealed through the initiative process.

County Sales Tax Legislation

Counties, especially rural counties with their relatively limited tax base, have claimed increasing distress over a lack of both general and transportation funding. For a variety of reasons, such as population growth, new state-mandated local programs, and increased crime, a few counties have approched insolvancy in the late 1980's. Tehama and Shasta Counties, for example, have cut back services such as sheriff's patrols, libraries, and road maintenance in an effort to stretch limited funds.

In an attempt to assist counties, two pieces of state legislation were enacted in 1987 which allow counties to increase their sales tax to finance transportation improvements or general expenditures. At the same time, the maximum allowable sales tax rate was increased.

Based on Proposition 218, any sales tax increase imposed for a specific purpose (such as transportation facilities), or by a single-purpose authority (such as a county transportation authority) is a special tax requiring approval by two-thirds of the electorate.

Revenue and Taxation Code section 7285 provides that any county may levy a sales tax increase to pay for general expenditures. This increase may be either 1/4 cent or 1/2 cent per dollar. The board of supervisors must approve the proposed increase by 2/3 vote before placing it on the countywide ballot. The tax must then be affirmed by a simple majority of the voters taking part in that election. The proceeds of the additional sales tax may be used for any government purpose, including capital improvements, salaries, maintenance, and equipment purchases.

Excise Taxes

"Although the California Constitution does not expressly prohibit multiple taxation, the provisions of Section 1 of Article XIII of the California Constitution, requiring that all property shall be taxed in proportion to its value, have been construed in a number of [court] decisions to prohibit the multiple taxation of ***property*** *(citations). On the other hand, it has been held that there is no similar constitutional prohibition against the levy of multiple* ***excise*** *taxes (citations)."*

Opinion #19078 of the California Legislative Counsel

In the words of the U.S. Supreme Court, an excise tax is "a tax imposed upon a single power over property incidental to ownership" (*Bromley v. McCaughn* (1929) 280 U.S. 124). It is not a property tax. Instead, it is a tax levied on one of the incidents of land ownership; not on the land itself nor on land ownership per se.

An excise tax must be reasonably based upon a rational governmental purpose, such as raising general revenues to pay for public improvements necessitated by new development. Accordingly, it should not be imposed on those who either are not exercising the privilege being taxed or do not receive some benefit from the improvements or services being financed by the tax. At the same time, since it is being imposed on a single activity or privilege of ownership, an excise tax must be collected from the person involved in that activity or privilege (not necessarily the property owner). For example, an excise tax on residential construction is properly levied on the builder.

Proposition 218 characterizes all taxes as either general taxes or special taxes. Since the proceeds of excise taxes must be placed into the general fund to avoid characterization as a special tax, they would clearly seem to be subject to the voting requirements established for general taxes. However, things are not that easy. The language of Proposition 218 and the statements by its authors which blur the lines between taxes, assessments, and fees may be interpreted in ways which could profoundly limit the use of excise taxes. The following interpretations are purely speculative, and are intended primarily to illustrate the ambiguity of Proposition 218 in this area.

Some excise taxes may be subject to the proportionality and voting requirements applicable to fees and charges. Proposition 218 defines a fee or charge as "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 a user fee or charge for a property related service" (Section 2(e), Article XIII D, California Constitution). An excise tax is neither an ad valorem tax, special tax, nor assessment. Therefore, perhaps an excise tax imposed upon developers as a condition of issuance of a building permit (such as that previously upheld in *Centex Real Estate Corp. v. City of Vallejo* (1993) 19 Cal.App.4th 1358) would be newly characterized as a fee or charge under Proposition 218. If this were the case, it would be limited strictly to the cost of the service or facility being financed and the levy imposed on each individual would be limited to the proportional cost of the service attributable to the parcel. Furthermore, imposing or increasing such a levy would require either simple majority approval of the owners of affected property or a two-thirds majority of area voters.

Another interpretation suggests that Proposition 218 may actually prohibit certain excise taxes. The reasoning is as follows: Proposition 218 provides that those taxes, assessments, fees or charges which may be assessed "upon any parcel of property or upon any person as an incident of property ownership" are limited to ad valorem property taxes, special taxes, assessments, and fees or charges (Section 3, Article XIII D, California

Constitution). When an excise tax is physically collected through the property tax rolls, it might arguably be levied "upon [a] parcel of property." Since Proposition 218 excludes general taxes from its list of taxes which may be assessed in that situation, excise taxes would not be allowed.

Until these ambiguities are clarified, either by legislation or litigation, new excise taxes should be approached cautiously. On the assumption that they are general taxes, existing excise taxes imposed after January 1, 1995 should probably be put on the ballot for ratification by November 5, 1998.

Utility Users Tax

This is a general tax levied on utility customers. Cities are empowered to levy taxes upon the use of utilities (such as electricity, gas, telephone, and cable television) whether those utilities are provided by the city or by a public or private utility company. The utility company will bill its customers for this tax and collect the proceeds as part of its normal operations. The resulting revenues are then remitted to the city. Some cities, such as Culver City, impose a split-rate tax which levies different charges on residential and commercial users.

Courts have repeatedly upheld the concept of a utility users tax. In *Rivera v. City of Fresno* (1971) 6 Cal.3d 132, the California Supreme Court concluded that "cities may levy fees or taxes [on public utility users] solely for revenue purposes" and are not preempted by the state's regulation of public utilities. *Fenton v. City of Delano* (1984) 162 C.A.3d 400 held that utility users taxes did not require 2/3 voter approval since they are general taxes and not subject to the Constitutional provisions of Proposition 13.

Utility user taxes can no longer be imposed without popular approval. As a general tax, existing utility user taxes must be ratified by voters prior to November 6, 1998. New utility user taxes are subject to approval by a majority of voters in a scheduled general election.

New uncertainty over the future passage of utility taxes led two bond rating agencies to downgrade the City of San Diego's credit rating in December 1996. Although San Diego has traditionally avoided imposing a utility user tax, the fact that it could no longer do so without voter approval left Standard and Poors and Moody's Investment Services with concerns over the city's long-term ability to service debt on its general obligation bonds. The City of Sacramento's credit rating was also lowered in December 1996 in part for similar reasons.

Transient Occupancy Tax

(Revenue and Taxation Code section 7280)

The transient occupancy tax (TOT) is a popular type of excise tax available to both cities and counties. A TOT may be levied on the occupation of rooms in a hotel, inn, tourist home or house, motel, or other lodging where occupancy is to be 30 days or less. A TOT may also be levied on spaces in an RV park or campground (Chapter 1186, Stats. 1992). In concept, the revenues from a TOT can help offset general fund costs, such as police protection, street cleaning, and museums, that are engendered by the traveling public.

At this writing, over 340 cities and several counties levy transient occupancy taxes. Proposition 218 requires some existing TOTs (i.e., those enacted in 1995-96 without popular vote) to stand for a vote of ratification. Any new TOTs or increases must likewise be approved by voters.

Infrastructure Financing District

(Government Code section 53395 et seq.)

The Infrastructure Financing District (IFD) statute is a new way for a city or county to finance infrastructure improvements that are consistent with that city's or county's general plan. It taps the property tax through a variation on "tax increment financing," the financing method commonly employed by redevelopment agencies.

Tax increment financing relies upon diverting to the financing agency a portion of the property taxes being collected within the project area. Put very simply the diversion works like this: when a financing district is formed, the amount of taxes being collected is noted; any subsequent increase in revenues beyond this base amount is the tax increment and is set aside for the exclusive use of the financing agency.

The IFD is not a new kind of redevelopment agency. For example, when redevelopment is involved, the tax increment can include those taxes that normally would have gone to other taxing entities such as school districts and the county. Conflicts often arise between the redevelopment agency and the affected taxing entities over the loss of taxes by those agencies. This cannot happen in a IFD. IFD law provides that each of the other taxing agencies must grant its approval before any of its portion of the increment can be collected by the IFD. In no case can a school district dedicate any of its portion of the increment to the IFD.

Second, an IFD has no power of eminent domain. Unlike a redevelopment agency, it cannot condemn property.

Third, an IFD cannot be established within a redevelopment area. The two financing mechanisms are self-exclusive.

Fourth, an IFD should be established only in areas that are substantially undeveloped. Redevelopment, on the other hand, occurs in largely developed areas that are "blighted."

Fifth, 2/3 majority approval is required of the registered voters, or in some cases the property owners, within the proposed district in order to create an IFD. The redevelopment procedure contains no popular voting requirement.

An IFD may finance the purchase, construction, expansion, improvement, or rehabilitation of any real or other tangible property with an estimated useful life of 15 years or longer. Facilities which are purchased must be already constructed at the time of purchase.

This legislation attempts to ensure that IFD developments will not have a deleterious effect on low- and moderate-income housing supplies. IFDs are obligated to provide low- and moderate-income housing when they are used to construct housing and when, as a result of their activities, existing housing is demolished or removed (Government Code section 53395.5).

Facilities eligible for financing through an IFD include, but are not limited to the following (Government Code section 53395.3):

- highway interchanges, bridges, arterial streets, and transit facilities
- sewage treatment plants and interceptor lines
- water treatment facilities for urban use
- flood control structures
- child care facilities
- libraries
- parks, recreational facilities, and open space
- solid waste transfer and disposal facilities

Facilities financed by an IFD must be of community-wide significance and provide significant benefits to an area larger than the area of the district.

Such facilities need not be located within the boundaries of the IFD. Facilities financed through an IFD may not replace existing facilities or services. They can, however, supplement existing facilities and services as necessary to serve new development.

The IFD law creates a complex procedure for establishment of an IFD (Government Code section 53395.10 et seq.). Briefly, it involves adoption of a "resolution of intention" by the city or county proposing to create the district; preparation of a detailed financing plan that is sent to affected property owners and taxing entities; a public hearing for the purpose of receiving comments from the public and affected taxing agencies; and a voting procedure similar to that used under the Mello-Roos Community Facilities Act. If the IFD proposes to issue bonds, it must obtain the approval of a majority of the legislative body of the city or county creating the district and of 2/3 of the district electorate.

Next: Chapter 2: Special Taxes

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A Planner's Guide to Financing Public Improvements

Chapter 2

Special Taxes

"Special tax" means any tax imposed for specific purposes, including a tax imposed for special purposes, which is placed into a general fund.

Subdivision (d), Section 1, Article XIII C of the California Constitution

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.

Subdivision (a), Section 2, Article XIII C of the California Constitution

Proposition 218 has clarified that a special tax may take either of two forms: any tax imposed for specific purpose whose proceeds are held in a separate account for that purpose, or any tax imposed by a special purpose district or agency, including a tax whose proceeds are placed in the general fund of that district or agency. This distinction reflects the evolving judicial view of special taxes set forth by the California Supreme Court's 1991 Rider (Rider v. County of San Diego 1 Cal.4th 1) and 1995 Guardino (Santa Clara County Local Transportation Authority v. Guardino 11 Cal.4th 220) decisions. In Rider, the Court overturned a sales tax being levied by San Diego County to fund a special authority created to finance construction of justice facilities, holding that it was a special tax subject to a two-thirds majority vote. The Guardino decision overturned a Santa Clara County sales tax on similar grounds (the tax was administered by a special authority and intended to finance transportation improvements, but did not receive two-thirds approval).

Under Proposition 218, a special tax is subject to reduction or repeal by popular initiative. An initiative campaign may be launched at any time after approval of the special tax.

Because it is a tax, not a fee or assessment, the amount of the special tax is not limited to the relative benefit it provides to taxpayers. Special taxes cannot be imposed on an ad valorem (property value) basis. They must be levied uniformly on all eligible properties or taxpayers. Typically, they are "per parcel" taxes apportioned according to the square footage of the parcel or on a flat charge. The proceeds of a special tax count toward a local government's Gann appropriations limit.

The *Guardino* decision affirmed that Proposition 62's definition of "district" (Government Code Section 53720) includes districts which have no property tax power. This specifically set aside the California Supreme Court's

1982 decision in *Los Angeles County Transportation Commission v. Richmond* 31 Cal.3d 197 which limited the application of Proposition 13 to only those special districts with property tax powers. Through *Guardino*, the Supreme Court has declared that Proposition 62 closes the *Richmond* "loophole" for districts created after Proposition 13.

The California Constitution does not, in itself, enable local governments to levy special taxes; that authorization must be specifically granted by the State Legislature (*California Building Industry Association v. Newhall School District, etc. et al.* (1988) 206 Cal.App.3d 212). Government Code sections 50075 et seq. provide much of the enabling language necessary for imposing special taxes. A city, county or special district (now including a school district) contemplating a special tax levy must hold a noticed public hearing and adopt an ordinance or resolution prior to placing the tax on the ballot. The ordinance or resolution must specify the purpose of the tax, the rate at which it will be imposed, the method of collection, and the date of the election to approve the tax levy. Approval by a 2/3 vote of the city, county or district electorate is necessary for adoption.

Experience has shown the 2/3 vote requirement to be a major hurdle for attempts at raising local special taxes. A Marin County special tax intended to help finance land acquisitions by its popular open space district and a proposed San Diego County special tax for libraries both failed to receive the required supermajority in the November 1996 general election.

Nonetheless, special taxes have been imposed for a variety of uses. For example, some of the special taxes approved in 1997 include: library, fire safety, and paramedic services in Los Angeles County; paramedic services in Mendocino County (Coast Life Support District); and fire protection in Marin County (Tamalpais Valley FPD).

Special taxes for public libraries

Government Code sections 53717-53717.6 enables any city, county or library district to impose a special tax within their jurisdiction for the purpose of funding public library facilities and services. These taxes may be applied on a uniform basis to real property or on the basis of benefit, cost of providing services or other reasonable basis (Government Code section 53717.3).

Special taxes for fire or police protection

Government Code section 53978 authorizes any local agency which provides fire protection, fire prevention services or police protection (either directly or by contract with another agency) to levy special taxes for fire protection/prevention and police protection. Prior to placing the tax proposal on the ballot, the agency must adopt an ordinance describing the rate of taxation and maximum tax levy. When a local agency determines the amount of tax annually, it must not exceed the maximum amount established by the original ordinance. The taxes must be levied on a parcel, class of improvement to property or use of property basis and may be varied to each parcel, improvement or use of property based on the degree of availability of fire or police services in the affected area.

The local agency need not impose this as a jurisdiction-wide special tax. It can establish particular areas or zones which will be assessed taxes to pay for services in those areas. The graduated application of this tax based on zoning classifications, where a flat tax rate was applied on all parcels within each zone regardless of size or other characteristics, was upheld in a 1986 California Supreme Court case (*Heckendorn v. City of San Marino* (1986) 42 Cal.3d 481). The court distinguished this method of calculating the tax burden from an ad valorem tax.

This tax may be used to pay for "obtaining, furnishing, and maintaining fire suppression and police protection equipment or apparatus or either such service" (Government Code section 53978(b)). It may also be used to pay salaries and benefits for firefighting or police protection personnel and for related expenses. Like other special taxes, a police/fire protection tax is dedicated to the use for which it was levied. It is subject to approval by two-thirds of the voters within the jurisdiction or zone proposed for taxation.

County Sales Tax Legislation

As discussed in Chapter 1, statute authorizes a county to levy a countywide sales tax increase, the proceeds of which are to be used within its boundaries. Two of these statutes allow a county to establish an authority which will administer the proceeds of the sales tax for specific purposes. Although the Legislature intended these to be characterized as general taxes subject to a simple majority vote, first the *Guardino* decision and now Proposition 218 make it very clear that the proceeds of this sales tax are "special taxes" and may only be imposed upon two-thirds approval.

The Local Transportation Authority and Improvement Act (Public Utilities Code sections 18000 et seq.) enables counties to impose an additional one-percent (or less) sales tax for a period of up to 20 years. The revenues generated by this tax are used to finance specific transportation projects either directly or through bonded indebtedness.

Pursuant to this Act, the county board of supervisors, by 2/3 vote, can create a local transportation authority for the purpose of administering the proceeds of a sales tax increase and call a popular election on the proposed tax increase. The membership of the transportation authority and the proposed expenditure plan must be approved by a majority of the cities having a majority of the city population in the county prior to placing the measure on the countywide ballot. The expenditure plan must be included in the official voters' pamphlets. Pursuant to Proposition 218, passage of the tax requires affirmation by a two-thirds majority of the voters taking part in that election.

Alternately, the county board of supervisors may establish an authority which would be empowered to propose a 1/4 or 1/2 percent sales tax increase for specific purposes (Revenue and Taxation Code section 7285.5). The authority must follow the same procedure that applies to the levy of a special tax. In addition, the authority must adopt an expenditure plan describing the specific projects on which the new tax revenues will be spent.

The Mello-Roos Act

The 1982 Mello-Roos Community Facilities Act (Government Code Sections 53311 et seq.) enables cities, counties, special districts, and school districts to establish community facilities districts (CFDs) and to levy special taxes to fund a wide variety of facilities and services. The proceeds of a Mello-Roos tax can be used for direct funding and, in the case of capital facilities, to pay off bonds. Mello-Roos financing has similarities to special taxes and special assessments and, in some situations, it has advantages over both.

The procedure for establishing a Mello-Roos district is not simple. The following is a general example of how it is done.

Proceedings may be started:

(1) by the local legislative body acting on its own initiative;

(2) at the request of at least two members of the body; or,

(3) when the body receives a petition signed by either 10% of the registered voters residing within the proposed district or by the owners of 10% of the land within the proposed district.

Within 90 days of the initiation of proceedings, the legislative body must adopt a resolution of intention which:

(1) describes the boundaries of the proposed district;

(2) states the name of the proposed CFD;

(3) describes the types of facilities and services to be provided or purchased within the district and any incidental expenses;

(4) states that a special tax, secured by recordation of a continuing lien on nonexempt property, will be levied annually. It must also specify the rate, method of apportionment, and manner of collection of the special tax in a way which will allow each landowner to estimate their tax liability;

(5) fixes a time and place for a public hearing on the district formation;

(6) describes any adjustment in property taxation necessary to pay prior indebtedness; and

(7) describes the proposed voting procedure.

(Government Code section 53321)

By the time of the public hearing, the agency must have prepared and made available a report explaining the proposed purpose of the district and containing an estimate of costs. (Government Code section 53321.5) Advance notice of the hearing must be published in a newspaper of general circulation and a notice mailed to each landowner and registered voter within the proposed district. The notice must contain the text of the resolution of intention, the time and place of the hearing, and a description of the protest procedure. Written or oral protests against creation of the district, the proposed district boundaries or the particular facilities or services to be funded can be filed prior to or at the public hearing. Proceedings must be abandoned for a period of one year if protests are received from either:

(1) 50% or more of the registered voters residing within the proposed district or six of such voters, whichever is more; or,

(2) the owners of one-half or more of the land in the district.

If the protests relate to particular boundaries, facilities, services, or taxes, the legislative body may revise the proposed district to accomodate those concerns. If, upon conclusion of the hearing (and any continuances thereto), the legislative body decides to create the CFD it must adopt a resolution of formation.

The next step is an election to authorize levying the specified tax. If necessary, this election may be combined with an election to raise the local Gann limit. The required election procedure varies depending upon the number of registered voters residing within the boundaries of the CFD. When there are 12 or more registered voters, the election is held among the registered voters residing within the CFD. If there are fewer than 12 voters, then a vote is held among landowners, with each acre of land or portion of an acre counting as one vote. Landowner elections may be conducted by mail, as was done by the Rocklin Unified School District in creating a Mello-Roos district covering 4454 acres of rural land slated for residential development. In both such circumstances, approval requires a two-thirds affirmative vote

As originally enacted, the Mello-Roos Act did not provide notice to prospective property buyers of their special tax obligations under a CFD. This shortcoming has been largely redressed by requiring: (1) clearer disclosure of the potential special tax burden at the time of a CFD election; (2) designation by the legislative body levying the special tax of an agency to respond to public inquiries about current and future special tax levies; and (3) full disclosure of the tax by the agency and sellers to prospective property buyers.

The Mello-Roos Act is designed to be flexible. Interestingly, the land included within the district boundaries need not be contiguous. As time goes by, additional area may be added to the Mello-Roos district through much the same manner as the district was originally created (Government Code section 53339 et seq.). A CFD can be broken into improvement districts that, subject to their own elections, can contribute to an overall project (Government Code section 53350). In addition, the facilities being funded need not be physically located within the boundaries of the Mello-Roos district (Government Code section 53313.5). CFD formation proceedings may be initiated in an area proposed for annexation to a city when that city has filed a resolution of intention for annexation with the Local Agency Formation Commission. Actual formation will be contingent upon approval of the proposed annexation (Government Code section 53316). Furthermore, the legislative bodies of two or more local agencies can enter into a joint community facilities agreement or a joint powers agreement in order to finance cooperative improvements or services. Such agreements may also include state or federal agencies.

Upon formation of the CFD and levy of the special tax, a special tax lien will be recorded against all eligible properties in the district (Government Code section 53340). This and the other disclosure requirements noted above ensure that purchasers of taxable properties will have constructive notice of the existence of the special tax.

The Mello-Roos Act is designed to make it as easy as possible to gain passage of the special tax within the constraints of a two-thirds vote. Because the CFD boundaries may be discontiguous, those areas which will not support the tax can be avoided. In landowner elections, the ballots may be distributed in any manner approved by the registrar of voters, including at the formation hearing.

A Mello-Roos tax is not a special assessment, so there is no requirement that the tax be apportioned on the basis of property benefit. Nonetheless, this can be done at local option (Government Code section 53325.3). When so apportioned, it may possibly be subject to the assessment requirements of Proposition 218. The tax can be structured so that it varies depending upon the zoning or development intensity of the property being assessed. Apportionment cannot, however, be done on an ad valorem basis.

A Mello-Roos tax can be used to finance the purchase, construction, expansion, improvement or rehabilitation of real property with a useful life of five years or more (Government Code section 53313.5). It can pay for other capital facilities including, but not limited to:

- local park, recreation, and open-space facilities (Government Code section 53313.5(a));
- parkway facilities (Government Code section 53313.5(a));
- elementary and secondary school sites and structures that meet the building area and cost standards of the State Allocation Board (Government Code section 53313.3(b));
- fire stations;
- highway interchanges;
- water and sewer systems;
- libraries (Government Code section 53313.5(c));
- child care facilities (Government Code section 53313.5(d));
- the undergrounding of utilities;
- acquisition, improvement, rehabilitation, or maintenance of public or private property for the purpose of removing or cleaning up hazardous materials (section 53313.5);
- work found necessary to bring public or private buildings into compliance with seismic safety standards or regulations (Government Code section 53313.5 (h));
- any governmental facilities which the legislative body creating the CFD is authorized by law to contribute revenue to, own, construct, or operate (Government Code section 53313.5 (g));
- acquisition, improvement rehabilitation, or maintenance of real or other tangible property, whether publicly or privately owned, for the purpose of removal or remediation of any hazardous substance (Government Code sections 53314.6 and 53313.8); and,
- the repair and abatement of damage caused to privately owned buildings and structures by soil deterioration, provided (a) the vote on the question of imposition of the special tax is unanimous, and (b) the work to be financed is certified as necessary by local building codes (Government Code section 53313.5).

There are certain limitations upon the use of Mello-Roos taxes for seismic safety improvements. First, only that work certified by local building officials as necessary to meet seismic safety regulations can be financed. Second, no dismantling of an existing building or construction of any new or substantially new building can be financed. Third, if improvements to private buildings are to be financed, the CFD must have unanimous approval of the affected land owners. Fourth, work on private buildings is limited to those that need seismic safety retrofitting or that were destroyed by the October 17, 1989 Loma Prieta earthquake.

In addition, within the counties declared disaster areas as a result of the Loma Prieta quake, a CFD may be formed to pay for any work needed to rebuild, repair, or replace any public or private building damaged or destroyed in that temblor. Work financed under this provision of Government Code section 53313.5 (h) is limited to those buildings which have been specifically identified in the resolution of intention to establish the CFD. The resolution must have been adopted before October 17, 1994.

A Mello-Roos tax can pay for the planning and design work directly related to the improvements being financed. Mello-Roos proceeds may also be put toward eliminating fixed special assessment liens or repaying any indebtedness secured by a tax, fee, charge or assessment levied within the CFD. (Government Code section 53313.5)

A Mello-Roos CFD may also fund the following services on a pay-as-you-go basis:

- police protection (including the provision of jails and detention facilities);
- fire protection and suppression;
- ambulance and paramedics;
- flood protection;
- recreation program and library services and additional funds for the operation and maintenance of parks, parkways, open space, museums, and cultural facilities (this final service cannot be approved through a landowner election); and,
- removal or remedial action for cleanup of any hazardous substance. (Government Code section 53313).

A CFD tax approved by landowners' vote (i.e. when there are less than 12 registered voters in the proposed district) can only finance the above services to the extent that they are in addition to services that were already being provided to the area before the district was formed (Government Code section 53313).

Bonds may be issued to finance infrastructure (but not services) under the Mello-Roos Act. Debt service is paid from the proceeds of the district. However, in order to avoid defaults, the legislative body must determine before the sale of bonds that the value of the real property that would be subject to the special tax will be at least three times the principal amount of the bonds to be sold and the principal amount of all other outstanding bonds within the CFD boundaries secured by Mello-Roos special taxes and special assessments. This rule and the exceptions to it may be found in Government Code section 53345.8. Refer to Government Code section 53345 for the procedure for issuing bonds.

Issuing bonds secured by the proceeds of the CFD has become quite popular. This provides an immediate source of cash for CFD projects that can then be repaid over time.

Some of the types of projects that have been funded through Mello-Roos bonds include:

- fire stations (Corona, Portola, and Riverside County);
- flood control/drainage improvements (Ontario, Fontana, Rancho Cucamonga, Oceanside, and others);
- K-12 school facilities (Chino Unified School District, Vallejo Unified School District, Corona-Norco Unified School District, Mountain View School District, and others);
- multiple public works in "planned communities" (Orange County, Riverside County, San Bernardino County, Thousand Oaks, Vallejo, and others);
- public park improvements (Tiburon and Riverside County);
- recreation and sports facilities (Highlands Recreation District of San Mateo County)
- road construction, bridges, and highways (Banning, Orange County, Poway, Riverside, Rocklin, Yorba Linda, and many others);
- solid waste recovery (Fontana); and,
- water supply/wastewater disposal (Corona, Los Angeles County, Riverside County, Santa Ana Mountains County Water District, and others).

Mello-Roos financing is the basis for a novel program to preserve open space and farmland near Fairfield in Solano County. The Solano County Open Space and Farmland Foundation administers the proceeds from Mello-Roos CFDs established by the city of Fairfield in conjunction with three large development projects. Once these projects are completed and a constant flow of income made available, the foundation will sell Mello-Roos bonds secured by the special taxes. The $3.5 million that is estimated to be raised will be used to purchase farmlands in the Suisun Valley and open space near Fairfield.

As with all special taxes, Mello-Roos taxes are subject to reduction or repeal by initiative. Proposition 218 does not specify whether the qualifying signatures for an initiative must be gathered jurisdiction-wide and the question put to jurisdiction-wide vote, or whether the initiative is limited to that portion of the jurisdiction within the boundaries of the CFD.

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A Planner's Guide to Financing Public Improvements

Chapter 3

Special Assessments

The effects of Proposition 218 will be felt nowhere more intensely than in the area of special assessments. The initiative reverses many long-standing procedures and court interpretations relating to the use and levying of special assessments. By design, Proposition 218 restricts the uses to which assessments may be put, limits the property owners who may be charged assessments, increases local agency accountability, and prohibits assessments that lack the support of local property owners. Perhaps unwittingly, Proposition 218 may also increase the cost to local agencies of financing bonded indebtedness through assessments and impose upon local agencies substantial new administrative costs. As noted before, Proposition 218 is not written as clearly as it might have been. Given that clarification will only come through legislation and litigation, its full impact will not be known for some time.

Because it is a Constitutional amendment, Proposition 218 supersedes all conflicting statutory laws. It applies to charter cities as well as counties, general law cities, and special districts. The assessment acts discussed in this chapter will have many provisions, particularly dealing with formation procedures and the scope of assessment power, which are no longer valid. We will note in the discussions of the individual assessment acts where, as of this writing, the acts appear to conflict with the provisions of Proposition 218.

Proposition 218

Proposition 218 establishes a strict definition of "special benefit." For the purposes of all assessment acts, special benefit means "a particular and distinct benefit over and above general benefits conferred on real property located in the district or the public at large. General enhancement of property value does not constitute 'special benefit.'" In a reversal of previous law, a local agency is prohibited by Proposition 218 from including the cost of any general benefit in the assessment apportioned to individual properties. Assessments are limited to those necessary to recover the cost of the special benefit provided the property. From a practical point of view, this will make open space and park assessments difficult to levy. It also complicates the process of setting assessments intended to finance public services, such as police, ambulance, and fire, and public buildings, such as libraries. The Chief Administrative Office of the County of Los Angeles, for example, has opined that Proposition 218 will require the county to rescind its library assessment and carefully reexamine the legality of its fire assessment.

In addition, assessments levied on individual parcels are limited to the "reasonable cost of the proportional special benefit conferred on that parcel."

Previously, assessments were seldom if ever levied on public property. Proposition 218 specifically requires assessments to be levied on public parcels within an assessment district, unless the agency which owns the parcel can "demonstrate by clear and convincing evidence" that its parcel will receive no special benefit.

Assessment District Formation Procedure

Proposition 218 establishes a common formation and ratification procedure for all special assessment districts as defined by Section 4, Article XIII D of the California Constitution. These requirements apply to all special assessments, to the exclusion of any conflicting laws. At this writing, the various assessment district acts have not been amended to remove these conflicts and to clarify ambiguities in the application of Proposition 218. The Legislature is expected to begin considering bills for this purpose in 1997.

All assessments must be supported by a detailed engineer's report prepared by a registered professional engineer. The report must contain: the total amount of money chargeable to the assessment district, the amount chargeable to each parcel in the district, the duration of the payments, the reason for the assessment, and the basis upon which the proposed assessment was calculated (Section 4(c), Article XIII D, California Constitution). Although not explicitly mandated by Proposition 218, the report should also include a description of the improvements or services to be financed through the special assessment, the proposed district boundaries, and a description of the special benefit which each parcel receives as a result of the assessment.

Prior to creating an assessment district, the city, county, or special district must hold a public hearing and receive approval from a majority of the affected property owners casting a ballot. All owners of property within the assessment district must be mailed a detailed notice of public hearing and a ballot with which to voice their approval or disapproval of the proposed district at least 45 days prior to the hearing (Section 4(e), Article XIII D, California Constitution). The notice must contain: the total amount of money chargeable to the assessment district, the amount chargeable to each parcel in the district, the duration of the payments, the reason for the assessment, the basis upon which the proposed assessment was calculated, and a summary of the ballot procedure, as well as the date, time, and location of the public hearing. The notice must also disclose that a majority protest will result in the assessment not being imposed.

At the hearing, the governing body of the agency must consider all protests to formation of the district. Assessment district proceedings must be abandoned if a majority of the ballots received by the conclusion of the hearing protest creation of the district. Ballots are to be weighted according to the proportional financial obligation of the affected property - the larger the financial obligation, the greater the weight that must be assigned to that property. Unlike previous law under many of the assessment district acts, the governing body cannot overrule the property owner vote. No other form of election is required. Once an assessment is created, it may be repealed or reduced by popular initiative.

A key practical question about the ballot process under Proposition 218 is who votes when a property is held in multiple ownership (or there are multiple renters who are directly liable for payment of the assessment) or when the property is owned by a public agency? This is not answered in the initiative and is expected to be the subject of legislation, litigation, or both in the coming year.

Agencies are going to have to work harder than ever to levy a new assessment or increase an existing one. They must clearly identify the special benefit being conferred to the parcels being assessed, excluding any identified general benefit. They must apportion the assessment on an individual basis to parcels within the district. Where an assessment is challenged in court, Proposition 218 specifies that the agency carries the burden of proof in showing that the property is receiving a special benefit and that the amount assessed is proportional to, and no greater than, the special benefits conferred. Most importantly, agencies will have to educate property owners about the advantages of the prospective assessment. The ballot process established by Proposition 218 favors those property owners who oppose the assessment (since they are generally the most motivated to return a ballot). Refer to the League of California Cities' "Proposition 218 Implementation Guide" for a discussion of the limits on public agencies' communications in elections.

Effective Date and Grandfathering

All of the above requirements took effect on November 6, 1996, so they apply to any new or increased assessments proposed after that date. The intent of the sponsors of the initiative is that existing assessments cease by July 1, 1997 unless ratified by the assessed property owners.

As of December 1996, a number of jurisdictions had already indicated that they will hold ratification elections for and, where necessary to limit assessments to special benefits, redraw the boundaries of existing assessment districts. For example, the City of San Mateo will revisit its downtown assessment for parking and street cleaning, Sacramento County will bring its Landscaping and Lighting Districts to a vote, and the City of San Diego will place 33 Landscaping and Lighting and 14 Business Improvement Districts on the ballot for ratification. Some jurisdictions have chosen to convert existing assessments to special taxes in order to avoid any challenge that they do not meet the definition of special benefit. These require the approval of 2/3 of the jurisdiction's voters.

There are exceptions to the application of Proposition 218. These apply to many of the assessments already in place as of November 5, 1996. The following existing assessments are not required to comply with Proposition 218 (although increases after November 6, 1996 may):

"(a) Any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems, and vector control...

"(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.

"(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.

"(d) Any assessment which previously received majority voter approval from the voters voting in an election on the issue of the assessment." (Section 5, Article XIII D, California Constitution)

Although they are usually sent out with the property tax bill, special assessments are not property taxes. Unlike taxes (including special taxes), the sum of a special assessment cannot exceed the cost of the improvement or service it is financing. Furthermore, special assessments cannot be levied against those properties which do not directly benefit from the improvements being financed. Property that is outside the area receiving the specific improvements being financed cannot be charged a special assessment.

Ad valorem property taxes on the other hand, are levied on eligible real property based upon that property's assessed valuation, unrelated to the proportional benefits being received by that property. So called "special taxes" are levied for a specific purpose, but are similarly unrelated to the proportional benefit being received from the improvements being financed.

California statutes give local governments the authority to levy a number of special assessments for specific public improvements such as streets, storm drains, sewers, street lights, curbs and gutters, and landscaping. The legislative body of a city, county, or in some cases a special district (flood control district, fire protection district, etc.), may, by invoking the proper statute in the proper manner, create a special assessment district that defines both the area to benefit from the improvements and the properties that will pay for those improvements. Thereafter, each property within the district will be assessed a share of the cost of improvements that is proportional to the direct benefit it receives from those improvements.

Pursuant to California case law, a special assessment district is not considered a separate legal entity like a special district (Dawson v. Town of Los Altos Hills (1976) 16 Cal.3d 676). Most special assessment districts have no officers or governing board and are strictly financing mechanisms.

History

Special assessments have a long history of use. Nationwide, special assessments can be traced back to a 1691 levy for street and drain construction in New York City. In California, several of the major assessment acts date from the early part of the 20th Century. Until the Great Depression of the 1930's, special assessments were a major municipal financing tool. Economic conditions during the depression caused numerous landowner defaults on assessments which, in turn, made it difficult to pay off the bonds backed by the assessments, and public credit suffered. From that time until the passage of Proposition 13, special assessments were used sparingly as local governments came to rely largely upon property taxes for their income.

When Proposition 13 first took effect, it reduced local property tax revenues by over 50%. Special assessments gained immediate notice as a "new" source of funding. A quick comparison of the use of special assessments before and after Proposition 13 illustrates how assessments have grown in popularity. In the 1960's and mid-70's the volume of assessments is estimated to have been from $20-50 million per year. By 1985, the estimated annual volume of special assessments had climbed to more than $700 million.

There were several reasons for the popularity of special assessments. First, the California courts have held they are not ad valorem property taxes. As a result, special assessments are exempt from the taxation limits imposed by Proposition 13 (*Fresno County v. Malmstrom* (1979) 94 Cal.App.3d 974; *Solvang Municipal Improvement District v. Board of Supervisors* (1980) 112 Cal.App.3d 545; *County of Placer v. Corin* (1980) 113 Cal.App.3d 443). Second, they are not "special taxes" requiring two-thirds vote of the electorate prior to being imposed. In fact, prior to Proposition 218, special assessment districts were established by the city council or county board of supervisors and usually not subject to public vote. Third, the proceeds of a special assessment are not "proceeds of taxes" for purposes of the Gann Act (*City Council v. South* (1983) 146 Cal.App.3d 320).

Accordingly, funds received from special assessments do not apply toward a jurisdiction's Gann Act spending limit.

Most of the special assessment acts also provide for the issuance of bonds. Bonds are, in effect, money that the local government is borrowing for the purpose of constructing the improvements authorized by the assessment district. These bonds are generally secured by the property within the district and the bonded indebtedness is repaid with the money generated by the assessments. Assessments are subject to reduction or repeal by popular initiative (Section 3, Article XIII C, California Constitution). Agencies securing bonded indebtedness with assessments created or increased after November 6, 1996 should disclose this fact to potential investors. Although the contract clause of the U.S. Constitution would likely preclude an initiative from eliminating an assessment securing bonded indebtedness, the loss of other potential sources of funding through initiative (which would affect the overall financial health of the agency) may be a concern.

Landowners are given the opportunity to pay off the assessment immediately, otherwise, the assessments become liens against the property and landowners pay them off in installments. Typically, assessment bonds are sold to provide the capital needed to pay for immediate construction of the project and are secured by property liens.

Several of the most common types of special assessments are summarized in the following paragraphs. These summaries are general discussions of complex financing acts. Please refer to the statutes themselves for detailed information, particularly on the subject of district formation and hearing requirements. Note that several of these acts are only available for use by cities.

The Assessment Acts

Improvement Act of 1911
(Streets and Highways Code section 5000 et seq.)

The 1911 Act may be used by cities, counties, and "all corporations organized and existing for municipal purposes." Assessments under this Act may be used to fund a long list of improvements including:

- transportation systems (including acquisition, construction, maintenance, and operation costs related thereto);
- street paving and grading;
- sidewalks;
- parks;
- parkways;
- recreation areas (including necessary structures);
- sanitary sewers;
- drainage systems;
- street lighting;
- fire protection systems;
- flood protection;
- geologic hazard abatement or prevention;
- water supply systems;

- gas supply systems;
- retaining walls;
- ornamental vegetation;
- navigational facilities;
- land stabilization; and,
- other "necessary improvements" to the local agency's streets, property, and easements.

The 1911 Act may also be used to create a maintenance district to fund the maintenance and operation of sewer facilities and lighting systems.

Pursuant to this act, improvements must be completed before their total cost is assessed against the properties within the district. Contractors are, in effect, reimbursed for their work from the proceeds of the district. This aspect of the 1911 Act requires that sufficient funds be available for the project before it is begun and is a major drawback of the legislation. Total costs may include acquisition, construction, and incidentals (including engineering fees, attorney's fees, assessment and collection expenses, and cost of relocating utilities). The uncertainty that results from Proposition 218's voting requirements will probably discourage the future use of the 1911 Act.

Individual assessments constitute liens against specific parcels and are due within 30 days of confirmation. If assessments are not paid in full within this period, a bond in the amount due is issued to the installer of the improvements and assessments are collected from individual properties to pay off the bond. The property owner receives a separate bill indicating the assessment due. Bonds may also be issued under the Improvement Bond Act of 1915 even though the assessment repaying the bonds has been levied under the 1911 Act. Alternatively, for assessments of less than $150, the assessment may be collected on the tax roll upon which general taxes are collected.

Since the parcel being assessed is the only security for any bonds issued, accurately estimating the value of the property is very important. The feasibility of the project will hinge on the value of the property involved.

As of this writing, the public notice and assessment procedure under the Act conflicts with the provisions of Proposition 218. Where differences exist, the requirements of the initiative prevail. Legislation is needed to reconcile these differences in the statute.

Municipal Improvement Act of 1913
(Streets and Highways Code section 10000 et seq.)

The 1913 Act may be used by cities, counties, joint powers authorities, and certain special districts which are empowered to make any of the improvements authorized under the Act. It specifically authorizes the construction and maintenance of all the facilities authorized under the 1911 Act as well as the following:

- works and appliances for providing water service, electrical power, gas service, and lighting; and
- public transit facilities serving an area smaller than 3 square miles (including stations, structures, rolling stock, and land acquisition related thereto).

In addition, a municipality may enter into an agreement with a landowner to take over the operation and other activities of a sewer or water system owned by that landowner and create a 1913 Act assessment district for the purpose of reimbursing the landowner. Such an assessment district may also include other land that can be served by the system, upon the written consent of the other affected landowners.

Unlike the 1911 Act, the total cost of improvements is assessed against the benefited properties before the improvements are completed. An assessment constitutes a lien against a specific parcel and is due within 30 days of recording the notice of assessment. If the landowner chooses not to pay the assessment in full at that time, bonds in the amount of the unpaid assessment may be issued under the 1911 Improvement Act or the 1915 Improvement Bond Act. Landowners will then be assessed payments over time.

A number of amendments to the Act enacted in 1992 have expanded its use to include certain building repairs and upgrades that are necessary to the public safety. For example, assessments may now finance work or loans to bring public and private real property or buildings into compliance with seismic safety and fire code requirements (Chapters 1197 and 832, Statutes of 1992.) Work is limited to that certified as necessary by local building officials. Revenues must be dedicated to upgrades; they cannot be used to construct new buildings nor dismantle an existing building. In addition, no property or building may be included within the boundaries of a 1913 Act district established for these purposes without the consent of the property owner. Furthermore, when work is financed on residential rental units, the owner must offer a guarantee that the number of units in the building will not be reduced and rents will not be increased beyond an affordable level.

The 1913 Act can also be used to finance repairs to those particular private and public real properties or structures damaged by earthquake when located within a disaster area (as declared by the Governor) or an area where the Governor has proclaimed a state of emergency as a result of earthquake damage (Chapter 1197, Statutes of 1992). The kinds of work which may be financed include reconstruction, repair, shoring up, and replacement. A jurisdiction has seven years from the time a disaster area is declared or a state of emergency is proclaimed to establish a district under this statute.

As of this writing, the public notice and assessment procedure under the Act conflicts with the provisions of Proposition 218. Where differences exist, the requirements of the initiative must be followed. Legislation is needed to reconcile the Act with Proposition 218.

Improvement Bond Act of 1915
(Streets and Highways Code section 8500 et seq.)

This legislation does not authorize assessments. Instead, it provides a vehicle for issuing assessment bonds (including variable interest bonds) for assessments levied under the 1911 and 1913 Acts as well as a number of other benefit assessment statutes. Under this legislation, the local legislative body may also issue "bond anticipation notes" prior to actual bond sale - in effect borrowing money against the assessment bonds being proposed for sale. The 1915 Act is available to cities, counties, public districts, and public agencies.

After assessments have been levied and property owners given the opportunity to pay them off in cash, the local government will issue bonds for the total amount of unpaid assessments. Assessments collected to pay off 1915 Act bonds appear on the regular tax bill and are collected in the same manner as property taxes.

Park and Playground Act of 1909
(Government Code section 38000 et seq.)

The Park and Playground Act is a method for cities to finance public park, urban open-space land, playground, and library facilities. Pursuant to a 1974 revision, the act incorporates the procedures and powers of the

Improvement Act of 1911, the Municipal Improvement Act of 1913, and the Improvement Act of 1915 to finance improvements. In addition to the power to levy assessments and issue bonds, the act provides that the city council may condemn land for improvements.

Tree Planting Act of 1931
(Streets and Highways Code section 22000 et seq.)

Pursuant to this act, cities may levy assessments to fund the planting, maintenance or removal of trees and shrubs along city streets and to pay employees to accomplish this work. Assessments for maintenance are limited to a period of 5 years.

These assessments are apportioned on the basis of street frontage. Work is to be administered by the city parks department or other agency as appointed by the city council.

As of this writing, the public notice and assessment procedure under the Act conflicts with the provisions of Proposition 218. Where differences exist, the requirements of the initiative prevail. Legislation is needed to reconcile the Act with Proposition 218. A city contemplating the use of the Act should document that street frontage is a valid measure of "special benefit." If frontage is not a directly indicator of benefit, use of this Act may be difficult to defend.

Landscaping and Lighting Act of 1972
(Streets and Highways Code section 22500 et seq.)

This Act may be used by cities, counties, and special districts (including school districts). Alleged abuse of the Landscaping and Lighting Act by cities and school districts was one of the motivating forces behind Proposition 218. The initiative targeted the allegedly tenuous link between parks and recreation facilities and the benefit they provided to properties in the area. Prior to Proposition 218, the successful argument in favor of the Landscaping and Lighting Act was that parks, open space, and recreation facilities benefited properties by increasing their value. As a result of the strict definition of special benefit created by Proposition 218 ("General enhancement of property value does not constitute 'special benefit.'"), that justification no longer exists and this Act will be much harder to use.

The 1972 Act enables assessments to be imposed in order to finance:

- acquisition of land for parks, recreation, and open space;
- installation or construction of planting and landscaping, street lighting facilities, ornamental structures, and park and recreational improvements (including playground equipment, restrooms and lighting); and,
- maintenance and servicing of any of the above.

Amendments to the Act, effective January 1, 1993, exclude from the authorized improvements any community center, municipal auditorium or hall, or similar public facility, unless approved by the property owners owning 50 percent of the area of assessable lands within the proposed district. The election shall be conducted following the adoption of an ordinance or resolution at a regular meeting of the legislative body of the local agency and is in lieu of any public notice or hearing otherwise required by this part.

As of this writing, the public notice and assessment procedure under the Act conflicts with the provisions of

Proposition 218. Where differences exist, the requirements of the initiative prevail. Legislation is needed to reconcile the Act with Proposition 218.

Benefit Assessment Act of 1982
(Government Code section 54703 et seq.)

This statute provides a uniform procedure for the enactment of benefit assessments to finance the maintenance and operation costs of drainage, flood control, and street light services and the cost of installation and improvement of drainage or flood control facilities. Under legislation approved in 1989 (SB 975, Chapter 1449), this authority is expanded to include the maintenance of streets, roads, and highways. As with most other assessment acts, it may be used by cities, counties, and special districts which are otherwise authorized to provide such services. It does, however, have some differences that set it apart.

Assessments can be levied on a parcel, a class of property improvement, use of property, or any combination thereof. Assessments for flood control services can be levied on the basis of proportionate stormwater runoff from each parcel rather than a strict evaluation of the flood protection being provided. The amount of assessment must be evaluated and reimposed annually. Assessments are collected in the same manner as property taxes.

As of this writing, the public notice and assessment procedure under the Act conflicts with the provisions of Proposition 218. Also, the Act states that an assessment may be levied wherever service is available, regardless of whether the service is actually used - this may conflict with the initiative's definition of "special benefit." Where differences exist between statute and initiative, the requirements of the initiative prevail. Legislation is needed to reconcile the Act with Proposition 218.

Integrated Financing District Act
(Government Code section 53175 et seq.)

This legislation creates an alternate method for collecting assessments levied under the 1911, 1913, and 1915 Acts, the Landscaping and Lighting Act of 1972, the Vehicle Parking District Law of 1943, the Parking District Law of 1951, the Park and Playground Act of 1909, the Mello-Roos Community Facilities Act of 1982, the Benefit Assessment Act of 1982, and charter cities' facility benefit assessments. The Integrated Financing District Act applies to all local agencies insofar as those agencies have the authority to use any of the above listed financing acts. Assessments levied under this act can be used to pay the cost of planning, designing, and constructing capital facilities authorized by the applicable financing act, pay for all or part of the principle and interest on debt incurred pursuant to the applicable financing act, and to reimburse a private investor in the project.

The Integrated Financing District Act has two unique properties:

(1) it can levy an assessment which is contingent upon *future* land development and payable upon approval of a subdivision map or zone change or the receipt of building permits;

(2) it allows the local agency to enter into an agreement with a private investor whereby the investor will be reimbursed for funds advanced to the agency for the project being financed.

Because the assessment is not triggered until development is ready to begin, these features make the act an attractive option when development is to occur in phases. Payment of assessments will be deferred until such time as public improvements are needed.

The procedure for creating an integrated financing district, including entering into a reimbursement agreement, is in addition to the procedure required by the applicable assessment act. The resolution of intention must include a description of the rates and method of apportionment, the contingencies which will trigger assessment of the levy, the fixed dollar amount per unit of development for the contingent levy, and a description of any proposed reimbursement agreement. The assessment and entry into any agreement are effective upon approval of the legislative body.

As of this writing, the public notice and assessment procedure under the Act conflicts with the provisions of Proposition 218. Where differences exist, the requirements of the initiative prevail. Legislation is needed to reconcile the Act with Proposition 218.

Street Lighting Act of 1919
(Streets and Highways Code section 18000 et seq.)

This act allows cities to levy benefit assessments for the maintenance and operation of street lighting systems. Assessments may also finance the installation of such a system by a public utility.

Assessments are liens against land and are due within 30 days of being recorded by the tax collector. The 1919 Act also establishes two alternate methods for collecting payments on an installment basis in the manner of property taxes. An assessment levied under this act must be evaluated and reapplied annually after a public hearing, and , pursuant to Proposition 218, a vote of the property owners.

As of this writing, the public notice and assessment procedure under the Act conflicts with the provisions of Proposition 218. Where differences exist, the requirements of the initiative prevail. Legislation is needed to reconcile the Act with Proposition 218.

Municipal Lighting Maintenance District Act of 1927
(Streets and Highways Code section 18600 et seq.)

This statute provides for the maintenance and operation (but not the installation) of street lighting systems within cities. Assessments are limited to a maximum of 5 years.

As of this writing, the public notice and assessment procedure under the Act conflicts with the provisions of Proposition 218. Where differences exist, the requirements of the initiative prevail. Legislation is needed to reconcile the Act with Proposition 218.

Street Lighting Act of 1931
(Streets and Highways Code section 18300 et seq.)

The 1931 Act is another means for cities to finance the maintenance and service (but not installation) of street lighting systems. Assessments under this act are levied annually and collected in installments in the manner of city taxes. The term of assessment is limited to 5 years.

As of this writing, the public notice and assessment procedure under the Act (which resembles the procedure under the 1919 Street Lighting Act) conflicts with the provisions of Proposition 218. Where differences exist, the requirements of the initiative prevail. Legislation is needed to reconcile the Act with Proposition 218.

Parking District Law of 1943
(Streets and Highways Code section 31500 et seq.)

This act authorizes a city or county to levy assessments to finance:

- the acquisition of land for parking facilities;
- the construction, operation, and maintenance of parking facilities (including garages); and,
- the costs of engineers, attorneys or other people necessary to acquisition, construction, operations, and maintenance.

The Parking District Law incorporates the assessment procedures and powers of the 1911, 1913, and 1915 Acts discussed previously. It also authorizes the use of meters, user fees, and ad valorem taxes to raise funds.

Once parking facilities have been acquired, administration of the parking district is turned over to a "Board of Parking Place Commissioners" appointed by the city mayor or county board of supervisors. This board reports to the legislative body on the status of the district each year. Annual assessments are levied by the legislative body, in accordance with Proposition 218.

As mentioned earlier, the public notice and assessment procedures of the 1911, 1913, and 1915 Acts currently conflict with the provisions of Proposition 218. Where differences exist, the requirements of the initiative prevail. Legislation is needed to reconcile the Act with Proposition 218.

Parking District Law of 1951
(Streets and Highways Code section 35100 et seq.)

Cities are authorized to finance the following activities under this act:

- acquisition of land for parking facilities (including the power of eminent domain);
- improvement and construction of parking lots and facilities;
- issuance of bonds; and,
- employee salaries.

Special assessments under the 1911 Act may be levied to replace the use of fees and charges to repay outstanding bonds. Other revenue sources may include user fees, parking meter charges, and ad valorem taxes.

District formation proceedings are initiated upon petition of involved land owners and generally follow the pattern of other assessment acts. As in the 1943 Act, the district is to be administered by an appointed parking commission.

As with those other acts, the public notice and assessment procedure of the 1951 Act currently conflicts with the provisions of Proposition 218. Where differences exist, the requirements of the initiative prevail. Legislation is needed to reconcile the Act with Proposition 218.

Parking and Business Improvement Area Law of 1989
(Streets and Highways Code section 36500 et seq.)

This act recodifies and supplants the 1979 law of the same name, now repealed. The Parking and Business Improvement Area Law of 1989 enables a city, county, or joint powers authority made up of any combination of cities and counties to establish areas of benefit and to levy assessments on businesses within those areas to finance the following improvements:

- parking facilities;
- parks;
- fountains, benches, and trash receptacles;
- street lighting; and,
- decorations.
- Assessment revenues may also be used for any of the following activities:
- promotion of public events benefiting area;
- businesses which take place in public places within the area;
- furnishing music to any public place in the area;
- promotion of tourism within the area; and,
- any other activities which benefit businesses located in the area.

Assessments must be directly proportional to the estimated benefit being received by the businesses upon which they are levied. Furthermore, in an area formed to promote tourism, only businesses that benefit from tourist visits may be assessed. The agency creating the assessment district area is authorized to finance only those improvements or activities which were specified at the time the area is formed. An unusual feature of this law is that assessments may be apportioned differently among zones of benefit, in relation to the benefit being received by businesses within each zone. The agency should carefully document the special benefit which each assessed property willreceive. Pursuant to Proposition 218, the assessment cannot finance improvements or services of general benefit.

Establishment proceedings may be initiated by either the legislative body of the city or county. The procedure is generally similar to other assessment acts and requires adoption of a resolution of intention and a noticed public hearing at which protests may be considered. If written protests are received from the owners of businesses which would pay 50 percent or more of the proposed assessment, the formation proceedings must be set aside for a period of one year. If these protests are only against a particular improvement or activity, the legislative body must delete that improvement or activity from the proposal. After a district has been established under this law, the legislative body must appoint an advisory board to make recommendations on the expenditure of revenues from the assessment. The advisory board may also be appointed prior to the adoption of a resolution of intention to make recommendations regarding that notice.

There's some ambiguity over whether Proposition 218 applies to the 1989 Law. Arguably, it does not apply since assessments are levied on businesses and are therefore not "a charge upon real property." Agencies should approach this assessment act with caution and a strong opinion from counsel before choosing not to comply with Proposition 218.

Property and Business Improvement District Law of 1994
(Streets and Highways Code section 36600 et seq.)

A city, county, or joint powers authority made up of cities and counties may adopt a resolution of intention to establish this type of district upon receiving a written petition signed by the property owners of the proposed district who would pay more than 50 percent of the assessments being proposed. The city, county, or JPA must appoint an advisory board within 15 days of receiving a petition which shall make recommendations to the legislative body regarding the proposed assessments (Streets and Highways Code section 36631).

The improvements which may be financed by these assessments include those enumerated under the Parking and Business and Improvement Area Law of 1989, as well as such other items as:

- closing, opening, widening, or narrowing existing streets;
- rehabilitation or removal of existing structures; and
- facilities or equipment, or both, to enhance security within the area.
- Assessment revenues may finance the activities listed under the 1989 Law, as well as the following:
- marketing and economic development; and
- security, sanitation, graffiti removal, street cleaning, and other municipal services supplemental to those normally provided by the municipality.

No provision is made within this law for financing bonded indebtedness.

The property owners' petition is required to include a management district plan consisting of a parcel-specific map of the proposed district, the name of the proposed district, a description of the proposed boundaries, the improvements or activities being proposed over the life of the district and their cost, the total annual amount proposed to be expended in each year of the district's operation, the proposed method and basis of levying the assessment, the time and manner of collecting assessments, the number of years in which assessments will be levied (this is limited to five years maximum), a list of the properties being benefited, and other related matters (Streets and Highways Code 36622).

The legislative body's resolution must include the management district plan as well as the time and place for a public hearing on the establishment of the district and levy of assessments will be held (Streets and Highways Code 36621). This hearing must be held within 60 days after the adoption of the resolution. Hearing notice must be provided pursuant to Government Code section 54954.6. Both mailed and newspaper notice are required (Streets and Highways Code section 36623).

The proposal to form the district must be abandoned if written protests are received from the owners of real property within the proposed district who would pay 50 percent or more of the assessments (Streets and Highways Code section 36625). In addition, when a majority protest has been tendered, the legislative body is prohibited from reinitiating the assessment proposal for a period of one year.

The public notice and assessment procedures of the 1994 Law are similar to the provisions of Proposition 218. An agency proposing to use the Act should take care to ensure that they are proceeding in harmony with Proposition 218 and that the properties being assessed are receiving an actual special benefit. Where conflicts exist, the requirements of the initiative prevail.

No assessments under this law can be levied on residential properties or on land zoned for agricultural use (Streets and Highways Code section 36635).

This statute is an alternative to the Parking and Business and Improvement Area Law of 1989 and does not affect any districts formed under that law.

Pedestrian Mall Law of 1960
(Streets and Highways Code section 11000 et seq.)

This authorizes cities and counties to establish pedestrian malls, acquire land for such malls (including power of eminent domain), restrict auto traffic within the malls, and to levy benefit assessments to fund mall improvements. Improvements may include:

- street paving;
- water lines;
- sewer and drainage works;
- street lighting;
- fire protection;
- flood control facilities;
- parking areas;
- statues, fountains and decorations;
- landscaping and tree planting;
- child care facilities;
- improvements necessary to a covered air-conditioned mall; and,
- relocation of city-owned facilities.

Assessments may also be used to pay damages awarded to a property owner as a result of the mall.

Establishment proceedings are similar to those found in other assessment acts. Accordingly, these provisions do not currently conform to the requirements of Proposition 218 and await reconciliation. Where conflicts exist, the requirements of the initiative prevail. Assessments and bonds are to be levied in accordance with the provisions of the Vehicle Parking District Law of 1943 (which provides for use of the 1911 and 1915 Acts, among others).

Permanent Road Divisions Law
(Streets and Highway Code sections 1160 et seq.)

This statute enables counties to establish areas of benefit (called "divisions" under this law) within which assessments may be levied in order to finance construction, improvement, or maintenance of any county road, public road easement, or private road or easement which contains a public easement (Streets and Highways Code section 1179.5). The statute also empowers a board of supervisors to levy special taxes for these purposes upon approval by 2/3 of the electorate within the division.

Proceedings for the formation of a road division may be initiated by either: (1) a resolution of the Board of Supervisors; or, (2) submittal to the Board of Supervisors of a petition containing either the signatures of a majority of the land owners within the proposed division or the owners of more than 50 percent of the assessed valuation. The public notice and assessment procedures of the Permanent Road Divisions Law conflict with the provisions of Proposition 218 by failing to provide for a property owners' ballot. The requirements of Proposition 218 must be followed in order to establish a division. Legislation is needed to reconcile the Act with Proposition 218.

Community Rehabilitation District Law of 1985
(Government Code section 53370 et seq.)

This act provides a means for cities and counties to finance the rehabilitation, renovation, repair or restoration of existing public infrastructure. It cannot, however, be used to pay for maintenance or services. A Community Rehabilitation District cannot be formed within a redevelopment project area.

A district established under the 1985 Act can rehabilitate public capital facilities such as:

- streets;
- sewer and water pipes;
- storm drains;
- sewer and water treatment plants;
- bridges and overpasses;
- street lights;
- public buildings;
- criminal justice facilities;
- libraries; and,
- park facilities.

It can also finance the expansion of facility capacity or the conversion to alternative technology.

The 1985 Act allows a rehabilitation district to use any of the following financing tools:

- Special assessments under the Improvement Act of 1911 and the Municipal Improvement Act of 1913 and bonds under the Improvement Bond Act of 1915.
- Special taxes and bonds pursuant to the Mello-Roos Community Facilities Act of 1982.
- Fees or charges, provided that these do not exceed the amount reasonably necessary to cover the cost of the involved project.
- Senior obligation bonds under the 1985 Act's own provisions (Gov. Code section 53387 et seq.).

Certain of the public notice and assessment procedures of this act conflict with Proposition 218. An agency proposing to use the Community Rehabilitation District Law should take care to ensure that they are proceeding in harmony with Proposition 218 and that the properties being assessed are receiving a concrete special benefit. Under Proposition 218, a general enhancement of property value is not a special benefit.

Public notice must be provided over a period of 5 weeks prior to the district formation hearing. This notice must contain the text of the resolution of intent, the time and place of the hearing, and a statement that the hearing will be open to all interested persons in favor of or opposed to any aspect of the district. If the district will utilize any of the above special assessment or community facilities acts, it may combine the notices required by those acts with this notice.

A separate procedure exists for issuing, administering, and refunding senior obligation bonds pursuant to the 1985 Act (Gov. Code sections 53387 - 53594). Issuance involves adopting a resolution of intention and submitting the bond issue to the voters of the district. Affirmation by a simple majority of voters is necessary to approve issuance of the bonds.

Geologic Hazard Abatement District
(Public Resources Code section 26500 et seq.)

This statute authorizes a city or county to create an independent Geologic Hazard Abatement District (GHAD) empowered to finance the prevention, mitigation, abatement, or control of actual or potential geologic hazards through the levy and collection of special assessments. The statute broadly defines geologic hazards to include: landslides, land subsidence, soil erosion, earthquakes, or "any other natural or unnatural movement of land or earth."

A district can:

- acquire property by purchase, lease, gift, or eminent domain;
- construct improvements;
- maintain, repair, or operate any improvements; and,
- use any of the assessment and bond procedures established in the Improvement Act of 1911, the Municipal Improvement Act of 1913, and the Improvement Bond Act of 1915.

Proceedings for forming a GHAD may be initiated by resolution of the city or county or by petition of the owners of at least 10% of affected property. A landowner petition must include signatures, legal descriptions, and a map of the proposed district boundaries. In addition, the city, county, or petitioners must include a "plan of control" prepared by an engineering geologist which describes the geologic hazard to be addressed, its location, the affected area, and a plan for the prevention, mitigation, abatement, or control of the hazard.

When forming a GHAD, the legislative body of the city or county can be the governing body of the district. Alternatively, the legislative body can appoint five land owners to act as the district's board of directors. Thereafter, board members will be elected every four years from within the district. Unlike most special assessment districts, the GHAD is an entity independent of the city or county.

The current procedure for forming a GHAD conflicts with Proposition 218 in that it does not provide for a property owners' ballot on the question of formation. When forming a GHAD, the city or county must conform its procedure to the engineer's report, public notice, balloting, and other requirements of Proposition 218.

The statute also provides for emergency formation of a GHAD upon the request of two-thirds of the affected property owners (Public Resources Code sections 26568-26597.7). This is invalid to the extent it conflicts with Proposition 218.

The statute does not describe the method for dissolving a GHAD. However, the California Court of Appeal has opined that dissolution of a GHAD is subject to the procedures of the Cortese-Knox Local Government Reorganization Act (Gov. Code 56000, et seq.) and cannot be unilaterally undertaken by a city (*Las Tunas GHAD v. Superior Court (City of Malibu)* (1995) 38 Cal.App.4th 1002). Under this interpretation, although district formation is undertaken by a city or county without the involvement of the county Local Agency Formation Commission (LAFCO), dissolving a district requires adherence to LAFCO procedures.

A GHAD has several advantages to recommend it. One, its boundaries need not be contiguous, so it can focus on just those properties subject to hazard. Second, it is an independent district with its own board of directors drawn from the affected property owners. Third, it is not limited to a single city or county; its boundaries can cross jurisdictional lines. Fourth, its formation proceedings are not subject to review by the Local Agency

Formation Commission, thereby simplifying the process. Fifth, its formation is exempt from the California Environmental Quality Act.

Contra Costa County has formed GHADs in its Blackhawk and Canyon Lakes developments. In both, the County Board of Supervisors serves as the governing body.

Open Space Maintenance Act
(Government Code sections 50575 et seq.)

Cities and counties are empowered to spend public funds to acquire open space land for preservation (Government Code sections 6950-6954). The Open Space Maintenance Act provides a means to levy an ad valorem special assessment to pay for the following services related to such land:

- conservation planning;
- maintenance;
- improvements related to open space conservation; and,
- reduction of fire, erosion, and flooding hazards through clearing brush, making fire protection improvements not otherwise provided the area, planting and maintaining trees and other vegetation, creating regulations limiting area use, and construction of general improvements.

The owners of lands representing 25% or more of the value of the assessable land within the proposed district may initiate district formation by filing a petition with the involved city or county. The local legislative body must then prepare a preliminary report containing a description of the proposed boundaries, the work to be done, an estimate of the cost of the assessment, and illustrating the parcels to be benefitted. The planning commission must review the report and make recommendation to the legislative body. Once the legislative body has reviewed the report, concluded that such a district is justified, and adopted an ordinance of intention to form an assessment district, it will set a time and place for hearing objections to the proposal. The ordinance of intention must specify the district boundaries, the proposed projects, the annual assessment, the maximum assessment, and the time of the protest hearing (Government Code section 50593). Notice must be placed in a newspaper of general circulation, mailed to involved property owners, and posted in a public place. The formation proceedings in current law conflict with the requirements of Proposition 218. A city or county must be careful to substitute the requirements of Proposition 218 for any conflicting provisions in the code. This statute needs to be amended to reconcile it with Proposition 218.

Fire Suppression Assessment
(Government Code section 50078 et seq.)

Special districts, county service areas, counties, and cities which provide fire suppression services (including those provided by contracting with other agencies) are authorized to levy assessments under this act. The resulting revenues may be used to obtain, furnish, operate, and maintain fire fighting equipment and to pay salaries and benefits to firefighting personnel.

Unlike the other special assessment acts, invocation of fire suppression assessments does not require establishment of an assessment district. Instead, the jurisdiction levying the assessment specifies those parcels or zones within its boundaries that will be subject to assessment.

Assessments are based upon uniform schedules or rates determined by the risk classification of structures and property use. Agricultural, timber, and livestock land is assessed at a lower rate on the basis of relative risk to the land and its products. The local agency may establish zones of benefit, restricting the applicability of assessments. In addition, assessments may be levied on parcels, classes of improvement or property use or any combination thereof. Assessments are proportional to the fire protection benefits received by property and improvements, but may be levied whether or not the service is actually used.

The procedure for establishing a fire suppression assessment includes:

- filing of a report which details the land to be assessed, the initial amount of assessment, the maximum assessment, the duration of the assessment, and the schedule or rate of assessment;
- public notice and hearing;
- protest procedures; and,
- adoption of an ordinance or resolution imposing the levy.

Proposition 218, with its strict definition of "special benefit," may pose a problem for new or increased assessments under this code. In fact, some jurisdictions, such as the Tamalpais Valley Fire District and the County of Los Angeles, have placed fire protection levies before the voters as special taxes (subject to two-thirds approval), effectively converting them from assessments.

The agency proposing to levy fire suppression assessments must be careful to document the special benefit (excluding any benefit to the general public and any general enhancement of property value) accruing to each parcel that is included in the assessment district. In addition, the formation proceedings in current law conflict with the requirements of Proposition 218. A city or county must substitute the requirements of Proposition 218 for all conflicting provisions in the code.

Facilities Benefit Assessment

The City of San Diego is levying assessments for capital improvements in urbanizing areas designated on its general plan. The city's Facilities Benefit Assessment (FBA) ordinance is generally based upon the Municipal Improvement Act of 1913, but relies upon this charter city's home rule powers rather than state statutes for authority. It is being used to pay for capital improvements such as major arterial and local streets, sewer and water facilities, a park and ride lot, a fire station, and a library in the North City West Community Plan area.

The FBA ordinance establishes areas of benefit to be assessed for needed improvements in newly developing areas. Each parcel within an area of benefit is apportioned its share of the total assessment for all improvements (including those required for later development phases) which is then recorded on the assessment roll. Assessments are liens on private property as with the state assessment acts. Upon application for a building permit the owner of the parcel must pay the entire assessment (the payment is pro rated if only a portion of the parcel is being developed at one time). Payment releases the city's lien on the property. The funds that are collected are placed in separate accounts to be used for the needed improvements and do not exceed the actual cost of the improvements plus incidental administrative costs. San Diego's FBA financing relies upon assessments only and does not provide for issuing bonds.

The procedure for levying assessments laid out in the city's FBA ordinance parallels the state improvement acts.

For the North City West Public Facilities Financing Plan FBA, the city prepared a report detailing needed improvements, construction costs and schedule, the proposed area of benefit, and the proposed formula for apportioning the assessment. After adopting the report and a notice of intention to consider enacting the assessment, the city scheduled a public hearing for the purpose of considering protests. At the hearing, the city presented additional information regarding the proposed boundaries of the areas of benefit, the facilities to be constructed, the method of apportionment, the method of computing annual increases in the assessment, and the amount of the city's contribution toward the cost of the improvements.

Assessments are apportioned based upon the parcels' Equivalent Dwelling Units (EDU). EDUs were assigned according to the development potential of the land as projected by the community plan, final map, or other measure. EDUs were computed prior to adopting the FBA after consultation with developers and landowners.

San Diego's FBA has been upheld by the courts in the face of challenges that it was a "special tax" subject to Proposition 13 requirements and that it was beyond the city's authority to enact (*J.W. Jones v. City of San Diego* (1984) 157 Cal.App.3d 745 and *City of San Diego v. Holodnak* (1984) 157 Cal.App.3d 760).

The City of Sacramento has established an FBA that clones San Diego's model. Sacramento is using it to pay for $16 million worth of improvements within the city's South Natomas Community Plan area. These include: traffic signals; bridges; street extensions and widening; and portions of a library, a community center and a fire station. As in San Diego, the city collects the full assessment when building permits are issued and there is no mechanism for issuing bonds.

Charter cities are subject to the requirements of Proposition 218. A city undertaking a facilities benefit assessment in the future, or proposing to increase an existing assessment, must comply with all the requirements and limitations of the initiative.

Seismic Safety Assessment

The city of Long Beach is using its powers as a charter city in forming a special assessment district to finance the private building improvements mandated by the city's seismic safety ordinance. Like many other cities, Long Beach requires that older buildings be brought up to current seismic safety standards. A strict city ordinance requires the demolition of pre-1934 buildings that have not been upgraded by 1991.

Participation in the district is voluntary. Building owners who want to be included in its boundaries must pay a non-refundable, good faith deposit and provide the city an accurate estimate of the probable cost of complying with the seismic safety ordinance. Once the city has received the owners' cost estimates and deposits, it will initiate district formation proceedings. The formation procedure is modeled after the 1911 and 1913 Acts.

After formation of the assessment district, the city issued $17.44 million in taxable bonds to finance the district-wide cost of the improvements. Individual assessments will be equal to the cost of bringing a particular building into compliance with code, plus a share of the debt service and administrative costs.

Through the following measures, Long Beach will ensure that the funds collected by the assessment district (and the associated bond sale) go directly to addressing the community health and safety concerns embodied in its seismic safety ordinance.

The city will be responsible for hiring the necessary contractors to upgrade participating buildings. No payments or loans will be made to building owners.

The scope of the work will be limited solely to those improvements required by the city's seismic safety code. For example, fire sprinklers will not be installed because they are not mandated by the ordinance.

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A Planner's Guide to Financing Public Improvements

Chapter 4

Fees and Exactions

Fees and exactions are really two facets of the same thing: direct charges or dedications collected on a one-time basis as a condition of an approval being granted by the local government. The purpose of the fee or exaction must directly relate to the need created by the development. In addition, its amount must be proportional to the cost of improvement.

Fees can be categorized in four major classes: (1) development impact fees (often called "developer fees") which are levied on new development to cover the cost of infrastructure or facilities necessitated by that development; (2) permit and application fees which cover the cost of processing permits and development plans; (3) regulatory fees; and (4) "property related fees and charges," as defined by Proposition 218. This chapter will focus primarily on developer fees and property related fees and charges.

Proposition 218 does not apply to "existing laws relating to the imposition of fees or charges as a condition of project development" (Section (b)(1), Article XIIID, California Constitution). Accordingly, development impact fees continue to be governed by the Mitigation Fee Act (Government Code section 66000, et seq.) and do not require voter approval. Similarly, Proposition 218 does not apply to permit and application fees. As will be discussed later, Proposition 218 requires property related fees and charges to be put to a vote of affected property owners, and classifies "standby fees" the future installation of utilities as assessments not fees, subject to its limitations and voting requirements.

Proposition 218 provides that any fee "imposed by an agency upon a parcel or a person as an incident of property ownership, including a user fee or charge for a property related service" requires prior approval of a simple majority of affected property owners or a two-thirds majority of the voters in the affected area. The initiative also lays out the specific method for establishing such fees. These requirements are detailed in the following section entitled "Property Related User Fees and Standby Charges."

Traffic mitigation fees, infrastructure improvement fees, and fees for improving sewer and water systems to accommodate new development are common examples of development impact fees. "Exaction" is a broader term for impact fees, dedications of land, and in-lieu fees that are imposed to fund public improvements necessitated by the proposed development. School facility fees, park land dedication requirements, and road dedication and improvement are all examples of exactions.

IMPACT FEES AND EXACTIONS

After the passage of Proposition 13, local government found itself with less money to pay for infrastructure improvements. In the past, cities and counties have, to a certain extent, subsidized new development by installing infrastructure or by charging impact fees that did not pay for the entire cost of the infrastructure necessitated by the project. Today, as new development occurs, cities and counties find themselves unable to afford the improvements that the development will need. They are turning to the developer to carry the burden of these costs. As a general rule, if the local government has the power to deny a project, then it also has the power to approve it subject to conditions that mitigate the reason for denial.

A development impact fee is an exaction that is imposed as a precondition for the privilege of developing land. Such fees are commonly imposed on developers by local governments in order to lessen the impacts of increased population or demand on services generated by that development. Local governments derive their authority to impose exactions from two sources: the "police power" granted to them by the State Constitution; and/or specific state enabling statutes such as the Subdivision Map Act.

Exactions and impact fees give new meaning to the old saying "you get what you pay for." Developers, and the new home buyers to whom the costs are passed, now find that they are paying more for what they get than ever before. A 1987 survey by the Bay Area Council found that the average impact fee for single family homes in the San Francisco Bay Area had increased by 644% in the previous ten years. At that time, the median fee for building a small detached residence was $9110. Fees have continued to rise in the 10 year since.

The increasing costs of impact fees is exacerbated by the cumulative effect of paying fees for more than one purpose and to more than one public entity. For example, the City of Roseville collects a parks fee, a sewer connection fee, a public facilities fee, and other fees. Its school district also imposes a fee.The total fees associated with new home construction in Roseville may exceed $13,000. Similar fee levels can be found in the cities of San Jose, San Ramon, and Anaheim.

As the dollar amount of impact fees has increased, so has the range of uses to which exactions are being put. The City of San Francisco collects impact fees from downtown commercial development for public transit improvements, low and moderate-income housing, and child care. The City of Irvine collects impact fees for traffic improvements. Concord funds child care through impact fees paid by non-residential development. Fresno uses impact fees to pay for fire stations, overpasses, railroad crossings, and traffic signals required by new growth. Orange County and its cities collect impact fees from new subdivisions to fund the construction of four major highway corridors.

Establishing reasonable and defensible impact fees is a special science. Cities and counties must be careful to limit fees to reasonable levels, to apply such fees equitably and proportionally, and to comply with the Mitigation Fee Act. For an excellent general discussion of this topic, refer to: The Calculation of Proportionate-Share Impact Fees, PAS Report No. 408, by James Nicholas and available from the American Planning Association. Although this book does not address California law's special requirements, its detailed suggestions for relating fees to projected impacts are helpful when drafting an impact fee ordinance. A more detailed reference is the highly informative Public Needs and Private Dollars and its 1995 supplement by William Abbott, Marian E. Moe, and Marilee Hansen (available from Solano Press Books, Point Arena, CA). It discusses the legal basis for impact fees and offers practical, California-specific advice about calculating and imposing such fees.

Subdivision Exactions

The Subdivision Map Act (Government Code section 66410 et seq.) gives cities and counties statutory authority to impose fees or dedications of land for specific uses as conditions of subdivision map approval.

The Map Act provides that certain types of exactions may only be imposed if a local subdivision ordinance contains specific enabling language to do so. The following sections of the Map Act provide enabling authority for such local ordinances.

- section *66475* - dedication of streets and alleys within the subdivision.
- section *66475.1* - dedication of bike paths in conjunction with streets and alley dedications.
- section *66475.2* - when the subdivision has the potential for 200 or more dwelling units, covers 100 or more acres or when transit services are or will be available to it, the jurisdiction may require dedication of land for local transit facilities.
- section *66475.3* - sunlight easements to facilitate solar energy use.
- section *66477* (Quimby Act) - dedication of land or payment of an in-lieu fee to provide park and recreation facilities to serve the subdivision. The amount of the exaction is limited by statute and must be based upon the policies and standards contained in an adopted general or specific plan.
- section *66478* - dedication of school sites to serve the subdivision. Such a dedication must be requested by the affected school district.
- section *66479* - areas within the subdivision may be reserved for parks, recreational facilities, fire stations, libraries, and other public uses based upon the policies and standards of an adopted general or specific plan. The local jurisdiction must enter into an agreement with the subdivider that specifies when the jurisdiction will purchase the reserved land.
- section *66483* - fees to pay for the construction of planned drainage or sewer facilities to serve the subdivision.
- section *66484* - fees to pay for the installation of planned bridges and major thoroughfares to serve the subdivision.
- section *66484.3* - authorizes Orange County and its cities to collect countywide fees for planned major road construction.
- section *66484.5* - fees to pay for planned groundwater storage and recharge facilities within designated areas of benefit.

There are also exactions which may be imposed under the Subdivision Map Act without the adoption of a local enabling ordinance.

- sections *66478.4* & *66478.5* - local jurisdictions must assure that subdivisions provide public access to public waterways. Subdividers can be required to dedicate this access.
- section *66478.11* - a provision similar to the above, relating to coastal and bayshore access.
- section *66478.12* - public access must be provided to lakes and reservoirs.

Fees vs. Taxes and Assessments

Fees which do not exceed the reasonable cost of providing the regulatory activity or service for which they are charged and which are not levied for general revenue purposes are not "special taxes" (Government Code section 50076). If a fee is subjected to legal challenge, the jurisdiction that is charging the fee carries the burden of proving that it is not a special tax (Government Code section 50076.5). Fees may be further distinguished from taxes because they are voluntary (in that development is a voluntary act) rather than compulsory and are imposed only upon those developing land rather than upon all landowners or taxpayers uniformly.

The relationship between users fees and special assessments is not as clear. In *San Marcos Water District v. San Marcos Unified School District* (1986) 42 Cal.3d 154, the California Supreme Court concluded that "a fee aimed at assisting a utility district to defray costs of capital improvements will be deemed a special assessment from which other public entities are exempt." Although the primary holding in this case (that one district need not pay another district's capital facilities fee) has been revised by the State Legislature as discussed later in this chapter, its view of the relationship between fees and special assessments remains. Any fee which qualifies as an "assessment" under Proposition 218 is subject to the approval requirements applicable to assessments.

Several court cases decided before and after the passage of Proposition 13 have upheld fees and exactions against challenges that they are taxes or special assessments. Here is a brief look at some of the more important decisions.

Associated Homebuilders of the East Bay v. City of Walnut Creek (1971) 4 Cal.3d 633 ratified the use of "Quimby Act"-type fees for exacting park and recreation land from new subdivision development. The court held that "a general public need for recreational facilities caused by present and future subdivisions" could justify the levying of exaction.

Mills v. Trinity County (1980) 108 Cal.App.3d 656 upheld the imposition of local fees for processing subdivisions, zoning, and other land use applications as long as they do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged.

Trent Meredith v. City of Oxnard (1981) 114 Cal.App.3d 317 upheld the validity of fees imposed under the School Facilities Act (authorizing exactions for interim school facilities) in the face of allegations that they constituted a special tax. The court pointed out that, unlike taxes, the fees were related to benefits received by or burdens created by the development.

Terminal Plaza Corporation v. City and County of San Francisco (1986) 177 Cal.App.3d 892 held that an ordinance requiring developers to provide replacement units whenever residential structures were demolished or converted to another use could be imposed under the city's police power. The exaction was held to be reasonably related to the cost of services necessitated by the project and was not levied for general revenue purposes.

Russ Building Partnership v. City and County of San Francisco (1987) 188 Cal.App.3d 977 upheld the city's exaction of a transit impact fee from new office development. The city had carefully established a factual basis for the fee before enacting it. The court concluded that the fee did not amount to double taxation because it was not imposed on the same property, at the same time, by the same authority, for the same purpose as any city tax. In fact, it was not a tax at all. "The fee in question was not aimed at replacing lost revenue. It is triggered by the voluntary action of the developer to construct something and directly tied to an increase in ridership generated by new development."

Here's an example of a fee which did not pass judicial muster. *Bixel v. City of Los Angeles* (1989) 216 Cal.App.3d 1208 illustrates the pitfalls of attempting to assign equitable fees to new development. Los Angeles charged Bixel Associates a fire hydrant and water main fee as a condition of issuing the building permit for a high rise office. Los Angeles had devised a formula for calculating such fees that was based on the ratio between the total amount that the city had spent for hydrants and water mains over a two year period and the value of work performed under building permits issued during that period.

The California Court of Appeal invalidated the city's fee ordinance, finding that the city's method of setting this fee failed to distinguish those costs which were solely attributable to new construction from those relating to routine repairs and maintenance. In addition, the fee ordinance did not expressly limit the use of fee revenues to improvements required by new development. As a result, the city could not demonstrate its compliance with the crucial principles that: (1) fees bear a reasonable relationship to the cost of the improvements necessitated by new development and (2) fees not be used for general revenue purposes.

Limits on Impact Fees and Exactions

The *Nollan* and *Dolan* Decisions

The U.S. Supreme Court holding in *Nollan v. California Coastal Commission* (1987) 107 S.Ct. 3141 has established that the power to impose exactions on development is not without limits. The U.S. Constitution guarantees that private land will not be taken without just compensation. This prohibition includes regulatory takings or inverse condemnation. An exaction will not be allowed to result in a taking. A legally defensible exaction must: (1) "advance a legitimate state interest" (such as protection of the public health, safety, and welfare); and, (2) mitigate the adverse impacts to that interest that would otherwise result from the project. An exaction may be imposed even if the development project itself will not benefit from it, when it is necessitated by the project's impacts on identifiable public resources. At least one view of the *Nollan* decision holds that exactions may only be required where the local government would otherwise be empowered to deny approval of the project.

The Nollan decision does not prohibit local governments from imposing impact fees or dedications as conditions of project approval. It does, however, require that government establish the existence of a "nexus" or link between the exaction and the state interest being advanced by that exaction. Once the adverse impacts of a project have been quantified, the local government must then document the relationship between the project and the need for the conditions which mitigate those impacts. This link may be forged by general plan policies or by special ordinances that are based upon studies or other objective evidence. Adoption of detailed findings, supported by evidence in the hearing record, is crucial to the enactment of a legally defensible fee ordinance.

AB 1600 of 1987 (Chapter 927) provides valuable guidance in this area by creating a statutory nexus requirement (Gov. Code sections 66000 et seq).

More recently, in *Dolan v. City of Tigard* (1994) 114S.Ct. 2309, the U.S. Supreme Court has held that in addition to the *Nollan* standard of an essential nexus, there must be a "rough proportionality" between proposed exactions and the project impacts that the exactions are intended to allay. The *Dolan* case focused on an administrative permit for expansion of a small plumbing and electrical supply business which was conditioned upon dedication of a bike lane and a storm drainage easement along an existing drainage channel. The Court overturned both exactions, holding that the city's conclusory findings were not specific enough to support the dedications.

Where *Nollan* established that there must be a nexus between the exaction and the state interest being advanced, *Dolan* added a second step to the analysis of exactions - there must be a "rough proportionality" between the exaction and the impacts of the project.The *Dolan* court offered this advice:

"We think a term such as 'rough proportionality' best encapsulates what we hold to be the requirements of the Fifth Amendment. No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development."

As in the *Nollan* case, the lesson to be learned is that public exactions must be carefully documented and supported. Many common exactions, such as street dedication, curb and gutter improvements, parks, and open space, will probably be able to meet the requirements of *Nollan* since they can be directly related to project impacts that would otherwise necessitate denial of the project. Whether all of these may withstand the stricter test created by *Dolan* is the question of the hour. Other, more exotic exactions, such as affordable housing, public art, and child care may be more difficult to impose if the local government cannot tie them directly to the impacts from the project. Some commentators believe that under the *Nollan* standard, exactions requiring the conveyance of land (dedications) may be subject to greater judicial scrutiny than fee exactions. In any case, dedications will be examined closely to determine whether they constitute impermissible "takings" without just compensation.

The *Ehrlich* Decision

The California Supreme Court clarified the *Nollan* and *Dolan* principles when it decided *Ehrlich v. City of Culver City* 12 C4th 854 in 1996. For over 20 years, Ehrlich owned a private tennis facility allowed under a specific plan and zoning approved by the city. When Ehrlich sought city approval to demolish the facility and replace it with luxury condominiums, an action which required rezoning the property and rescinding the specific plan, the city balked. After a period of dispute, the city eventually approved Ehrlich's proposal, subject to conditions including a recreational mitigation fee of $280,000 imposed ad hoc to enable the city to replace the loss of the tennis courts and a $33,200 in-lieu fee imposed under the city's "Art in Public Places" ordinance. Ehrlich challenged the constitutionality of these fees, alleging that there was no "essential nexus" (as required by *Nollan*) for imposing either aesthetic requirements or recreation mitigation fees on the project and that the fees being imposed were not "roughly proportional" to the impact of his project (the higher level of scrutiny required by *Dolan*).

The California Supreme Court's decision allowed both Ehrlich and Culver City to claim some element of victory. The court made two key points:

(1) Developers who wish to challenge a development fee on either statutory or constitutional grounds must do so under provisions of the Mitigation Fee Act (Government Code section 66000, et seq.).

(2) The two part *Nollan/Dolan* test applies only to ad hoc fees and dedications of land (as opposed to legislatively-enacted fees). The "rough proportionality" component does not apply to legislatively-enacted fees such as Culver City's Art in Public Places (here the court also held that this ordinance enacted to enhance aesthetics was a reasonable use of the city's police power under *Nollan*).

The California Supreme Court has distinguished between the imposition of legislatively-enacted and ad hoc fees. The ad hoc recreational mitigation fees, developed for this specific project and applied as a condition of approval, were subjected to a higher level of scrutiny (i.e., application of both *Nollan/Dolan* principles) than the legislatively-enacted art in public places fees, which were developed for general application. As Justice Mosk noted in his concurring opinion, greater scrutiny is needed so that the court may ensure that "the developer is not being subject to arbitrary treatment for extortionate motives. These singular fees present a greater possibility that the government is unfairly imposing disproportionate public burdens on a lone, and therefore particularly vulnerable, property owner."

Since the *Ehrlich* decision, the Legislature has amended the Mitigation Fee Act (Government Code section 66000, et seq.) to specify that its requirements apply to both legislatively-enacted and ad hoc fees (Government Code sections 66000 and 66020). Compliance with the Act should inoculate cities and counties from successful challenge under the *Nollan/Dolan* test.

The courts continue to clarify the *Nollan* and *Dolan* holdings. In *Loyola Marymount University v. Los Angeles Unified School District* (1996) 45 Cal.App.4th 1256, a California court of appeal held that the two-part *Nollan/Dolan* test did not apply to a school impact fee that was imposed on the basis of the state school impact fee law (Government Code Sections 53080 and 65995).

Statutory Limits

In 1987, at almost the same time that the U.S. Supreme Court was handing down its decision in the *Nollan* case, the California Legislature approved AB 1600 (Chap. 927, Stats. of 1987), a bill requiring local agencies to establish a "nexus" or link between the fees being exacted and the needs created by the project paying the fees as well as to account for the ultimate use of any fees. These requirements and subsequent amendments are codified at sections 66000 et seq. of the Government Code.

By its own terms, the Mitigation Fee Act applies to development impact fees imposed by local agencies to finance all or part of the cost of public facilities (such as streets, traffic signals, bridges and major thoroughfares, drainage and flood control facilities, water and sewer, and government buildings). These requirements do not apply to taxes or special assessments (which are not fees), Quimby Act fees, processing fees, fees collected under a development agreement, or certain fees collected by redevelopment agencies. "Local agency" is defined to include counties, cities, special districts and school districts (Government Code section 66000 (c)).

Whenever establishing, imposing, or increasing a fee "as a condition of approval of a development project," the local agency imposing the fee must identify the purpose of the fee and the use to which it will be put. The local agency must also specify the nexus between the development project (or class of project) and the improvement being financed (Government Code section 66001). It must further establish that the amount of funds being collected will not exceed that needed to pay for the improvement (Government Code section 66005).

Revenues resulting from such fees must be kept and administered in a separate account or fund dedicated to the public improvements being financed and must not be commingled with other revenues and funds of the local agency (Government Code section 66006). In addition, five years after the first deposit into the account or fund, the local agency must make specific findings regarding any unexpended funds, whether those funds are committed to expenditure or not (Government Code section 66001). The same findings must continue to be made once every five years thereafter. If these findings are not made, statute requires the agency to refund the fees to the current owner of the affected property. Refunds may be made by direct payment, temporary suspension of fees, or "other reasonable means," at the discretion of the local agency.

In its findings under section 66001, the agency must:

(1) identify the purpose to which the fee is put;

(2) demonstrate a reasonable relationship between the fee and purpose for which it is charged;

(3) identify all sources and amounts of funding anticipated to be used to finance the incomplete improvements; and

(4) designate the approximate dates on which the above funding is expected to be deposited into the appropriate account or fund.

The following discusses some of the other aspects of these statutes.

- Government Code section 66001 requires that when sufficient funds have been amassed to complete the financing of public improvements for which impact fees have been collected (as determined in the annual fiscal report required under section 66006), but the improvements have not been completed, the agency must either identify "an approximate date by which the construction of the public improvement will be commenced" or refund the unexpended portion of the funds to the current record owners of the affected properties on a prorated basis.
- Government Code section 66006 requires that fees collected for an improvement related to a development project must be deposited in a separate fund or account and are to be expended "solely for the purpose for which the fee was collected." It further requires that the agency make a yearly public financial disclosure for each of its fee accounts. The provisions of this section apply to all development projects, including residential, commercial, and industrial.

Within 180 days of the end of each fiscal year, the agency must make the following information available:

(1) a brief description of the type of fee in the account;

(2) the amount of the fee;

(3) the beginning and ending balance of the account;

(4) the fees collected that year and the interest earned;

(5) an identification of each public improvement for which the fees were expended and the amount of the expenditures for each improvement;

(6) an identification of an approximate date by which construction of the improvement will commence if the local agency determines that sufficient funds have been collected to complete financing of an incomplete public improvement;

(7)a description of each inter-fund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, the date on which any loan will be repaid, and the rate of interest to be returned to the account; and

(8) the amount of money refunded under section 66001.

The public agency must review the fiscal report at its next scheduled public hearing after public release of the report. Section 66006 specifies the requirements 15-day advance public notice.

- Government Code section 66006.5 provides that a city or county which is imposing a fee or charge for transportation purposes may, by ordinance, create a procedure for accepting property dedications in lieu of full or partial payment of that fee or charge.
- Government Code section 66007 prohibits a local government which has imposed fees for the construction of public improvements or facilities as part of a residential development from requiring payment of the fee prior to the date of final inspection or the issuance of final occupancy certificate, whichever comes first. As a condition of granting the building permit, the local agency may require the developer to execute a contract promising to pay the required fee upon final inspection or issuance of a certificate of occupancy.

When a project involves more than one dwelling, the local agency can determine whether: (1) the fee is to be paid in a lump sum when the first residence receives its final inspection or certificate of occupancy; (2) the fee is to be paid on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy; or (3) the fee is to be paid on a pro rata basis for each dwelling as it receives its final inspection or certificate of occupancy.

Fees may be collected before the final inspection or certificate of occupancy stage if the local agency determines that:

(1) the fees will be collected for an improvement or facility for which an account has already been established and funds appropriated and the local agency has adopted a proposed construction schedule or plan for the project (i.e., a capital improvement plan or five-year school facilities plan; or,

(2) the fees are to reimburse the agency for expenditures it has already made.

Section 66007 does not apply to fees collected to cover the cost of code enforcement or inspection services.

- Government Code section 66008 was enacted in 1997 in response to reports that the accounts established for development fees were being commingled and, in some cases, had been illegally placed in general revenue accounts. It reiterates the requirement that development fees are to be expended only on the public improvements for which the fee was collected. It also reminds local agencies that fees are not to be levied, collected, or imposed for general revenue purposes.
- Under Government Code section 66011, local agencies cannot collect fees from the reconstruction of any residential, commercial or industrial development that has been damaged or destroyed as a result of a natural disaster, as declared by the Governor. Fees can be assessed on that portion of the development which is not "substantially equivalent" to the property being rebuilt.
- Government Code sections 66013 and 66014 provide that fees for water or sewer connections and for zoning variances, zone changes, use permits, building inspections, building permits, planning services, subdivision maps, and LAFCO proceedings may be adopted without a public vote only when they do "not exceed the estimated reasonable cost of providing the service for which the fee is charged."
- Government Code section 66016 imposes a general requirement that newspaper notice be made and an open and public hearing held prior to approval of any proposed new fee or increase in existing fees. Prior

to the hearing, the agency must make data on the estimated cost of services and the estimated revenues generated by the fees available to the public. This section prohibits the legislative body of the agency from delegating authority to enact new or increase existing taxes.

- Government Code section 66017 establishes a 60-day delay between the time a fee, charge, or an increase in a fee or charge is adopted and when it becomes effective. This section applies to fees for development projects as defined under section 66000.

  For those instances where fees are needed immediately, the statute also establishes an urgency procedure whereby, with four-fifths vote of the local legislative body, interim fees may be collected for up to 30-days. Not more than two 30-day extensions of the urgency fees can be voted by the legislative body. (Government Code section 66017 (b)).

- Pursuant to Government Code section 66020, any party may protest the imposition of fees, dedications, reservations or other exactions imposed on a residential housing development (including a tentative subdivision map or parcel map). To do so, the party must pay the exaction in full (or provide evidence of arrangements to pay) when due or otherwise ensure performance of the conditions imposed when required and serve the governing body of the agency with a notice that payment in under protest. A protest must be filed when the development is approved, or within 90 days of imposition of the exaction. The agency must notify the applicant in writing of the project's approval and beginning of the 90-day period in which to submit a protest. Any related court challenge must be filed by the party within 180 days of the agency's written notice.

  If a court upholds the challenge, the local agency must refund the fee collected, with interest. Amendments to the code require the court, if it grants a judgement to a plaintiff invalidating all or a portion of an ordinance or resolution enacting a fee, dedication, reservation, or other exaction, to direct the local agency to make the refund to a plaintiff or to any other person who paid the fee or exaction under protest. A local agency which has received such a protest cannot withhold approval or the issuance of permits for the residential project solely for that reason. However, when the permitting agency makes certain findings relative to the public health, safety, and welfare, they may suspend approval of the project pending either withdrawal of the protest, expiration of the 180-day time-limit without an action being filed or resolution of the action that is filed.

- Government Code section 66021 states that any party on whom a fee, tax, assessment, dedication, reservation, or other exaction has been imposed may protest. If the party files the protest under both section 66008 and 66475.4 (protest of subdivision exactions), then section 66475.4 shall prevail where conflicts exist between the two procedures. The protest procedures of section 66021 do not apply to the protest of any tax or assessment that is (1) levied under a principal act which contains its own protest procedures; or (2) pledged to secure the payment of principal or interest on bonds or other public indebtedness.
- Government Code section 66022 provides that judicial challenges to fees adopted or amended under either section 66013 or 66014 must be mounted within 120 days of adoption or amendment. This also applies to fees that are amended automatically under the terms of a local resolution or ordinance. The agency imposing the fee bears the burden of proof in a legal challenge to its fee (section 66024).
- Government Code section 66023 establishes a procedure by which anyone may request an audit of a local agency's fees.

Other pertinent fee statutes include:

Public Resources Code section 21004 limits mitigation measures to those which may be imposed by authority separate from the California Environmental Quality Act (CEQA). The local subdivision ordinance is an example of such an independent authorization for imposing exactions. CEQA itself provides no authority to impose fees or dedications.

Government Code section 50030 provides that no permit fee imposed by a city or county for the placement, installation, repair, or upgrading of telecommunications facilities (lines, poles, or antennas) by a telephone corporation that has obtained all necessary authorizations from the California Public Utilities Commission and the Federal Communications Commission may exceed the cost of providing the service for which it is charged, nor be levied for general revenue purposes.

Government Code section 65913.8 prohibits the use of fees imposed as a condition of development project approval to pay for maintaining and operating the infrastructure built with those fees. This statute offers two exceptions to its own rule for small developments where formation of a maintenance district is impractical or where maintenance is only to be funded during a temporary period while a maintenance entity is being formed.

Statutory Limits to Map Act Exactions

Section 66411.1 of the Map Act limits the improvements that may be required of a subdivision of five or fewer lots to the dedication of rights-of-way, easements, and the construction of offsite and onsite improvements. Installation of the improvements is not required until a permit is required for development of the new parcel or until construction is required under a schedule agreed upon by the jurisdiction and the subdivider. This limitation does not apply to Quimby Act exactions.

All or a portion of any land which has been dedicated in fee for public purposes (including public improvements and facilities, but not open space, parks or schools) is subject to reconveyance to the subdivider if, upon the request of the subdivider, the local agency determines that the public purpose for which all or a portion of the land was originally dedicated no longer exists or the property is not needed for public utilities (Government Code section 66477.5). Further, upon subdivision map approval, local agencies must attach a certificate to the approved map which states the name and address of the subdivider who is dedicating the land, a legal description of the dedicated land, and notice that reconveyance will be made under the circumstances described above. The reconveyance requirement applies only to land which was required to be dedicated on or after January 1, 1990.

The Map Act also creates a procedure for protesting dedications alleged to be excessive. Government Code section 66475.4 provides that a subdivider may bring suit against the local agency to determine whether a dedication "is not reasonably necessary to meet public needs arising as a result of the subdivision." This section does not apply to in-lieu fees. When a dedication is found to be excessive, the local agency must either:

(1) require redesign of the subdivision;

(2) pay compensation for the excessive portion of the dedication; or,

(3) require redesign of the subdivision to delete or modify the excessive dedication.

SERVICE CHARGES

Many of the service fees levied by local government are authorized by state enabling statutes. For example: waste disposal sites and services within county service areas under Government Code section 25210.77(e); water service connection charges under Water Code section 22281.1; and city sewer service or immediate availability charges under Government Code section 38902.

The local government's legislative body may impose fees for services only after a noticed public hearing. Pursuant to Government Code section 66014 et seq., when a local agency charges fees for zoning changes, zoning variances, use permits, building permits, building inspections, filing of applications for annexation or related reorganizations, subdivision maps, or planning services "those fees shall not exceed the estimated reasonable cost of providing the service for which the fee is charged." Fees which exceed the reasonable cost are considered special taxes and must be submitted to the jurisdiction's voters for a two-thirds vote approval. Water connection, sewer connection, and capacity charges are similarly limited under section 66013. The amount of the fee must be based upon a needs study or other evidence in the hearing record so that its reasonableness can be ascertained (Beaumont Investor*s v. Beaumont-Cherry Valley Water District* (1985) 165 Cal.App.3d 227).

The Legislature approved a measure statutorily overturning the San Marcos Water District v. San Marcos Unified School District (1986) 42 Cal.3d 154 discussed earlier. Pursuant to Government Code sections 54999-54999.6, any public agency which has been providing public utility service may charge another agency a capital facilities fee or capacity charge to pay the capital cost of a public utility facility. However, new fees may only be imposed on state agencies, schools, and state colleges and universities under cooperative agreement with such agencies (section 54999.3). These fees and charges may be subject to Proposition 218, depending on the service being provided.

PROPERTY RELATED USER FEES AND STANDBY CHARGES

Proposition 218 has amended the State Constitution to state that "property related" fees and all standby charges may be imposed only upon voter approval. Although its provisions are not always reflected in statute, bear in mind that any statutory law or regulation which conflicts with Proposition 218 is null and void.

Under the express terms of the initiative, no fee or charge can be imposed or increased unless it meets all of the following requirements:

- the revenues derived from the fee do not exceed the funds necessary to provide the property related service;
- the revenues are not used for any purpose other than that for which the fee or charge was imposed; and
- the amount charged to "any parcel or person as an incident of property ownership" does not exceed the proportional cost of the service which is attributable to the parcel (Section 6(b), Article XIII D, California Constitution).

Further, Proposition 218 prohibits levying property related fees to pay for general governmental services, such as police, fire, ambulance, or library service which are available to the public at large; services which are not used by or immediately available to the property owner; and programs unrelated to the property related service. The initiative requires the repeal of all nonconforming fees by July 1, 1997.

Proposition 218 defines a fee or charge as "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 tenants who are directly responsible for paying the fee or charge]" (Section 2(c) and (g), Article XIII D, California Constitution). It requires property owner approval of property related fees and charges, with the exception of fees and charges for sewer, water, and refuse collection services. Standby charges and charges for future services are now classified as special assessments (Section 6, Article XIII D, California Constitution). They can only be levied in accordance with the rules for special assessments described in Chapter III.

In order to impose (or in the case of existing fees, increase) property related fees and charges, the jurisdiction must:

- Identify the parcels upon which the fee or charge is to be imposed.
- Calculate the amount to be charged to each parcel.
- Notify by mail the record owner of each parcel of the proposed fee or charge. The notice must disclose the amount to be charged to that parcel, the basis for calculating the amount, the reason for which the fee is charged, and the date, time, and place of the public hearing to be held on the proposal.
- Hold a public hearing not less than 45 days after the mailing of public notice at which to consider protests against the proposed fee or charge. The proposal must be dropped if a majority of the affected property owners submit written protests at that time.
- Conduct a protest ballot not less than 45 days after the public hearing on the question of whether to impose the fee or charge (this assumes that a majority of written protests are not received at the hearing). The balloting may be conducted either among the affected property owners (simple majority necessary for approval) or among the electorate residing in the affected area (two-thirds majority necessary for approval). This may be carried out by mailed ballot, similar to the procedure for special assessments. In any case, no balloting is required for fees or charges for sewer, water, and refuse collection services.

The election process for fees and charges differs in several respects from the process required for special assessments. First, the public hearing on the fees or charges is separated from the ballot by at least 45 days. For special assessments, the ballots are compiled at the public hearing. Second, a proposed fee or charge may be killed before going to ballot if a majority of the affected property owners submit written protests at the public hearing. Killing a proposed special assessment requires the return of formal ballots. Third, a jurisdiction proposing or increasing a fee or charge may place the question before either of two electorates: affected property owners (simple majority necessary for approval) or all voters residing within the area subject to the fee (two-thirds majority necessary for approval). A special assessment election is limited to affected property owners. Fourth, fees or charges for sewer, water, and refuse collection services are subject to public hearing and majority protest requirements, but not a protest ballot. After July 1, 1997 all special assessments will be subject to the voting requirements.

As with taxes and assessments, property related fees and charges are subject to repeal or reduction by voter initiative.

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A Planner's Guide to Financing Public Improvements

Chapter 5

New School Facilities

Even before the passage of Proposition 13 in 1978, school budgets were largely determined by the state in compliance with the California Supreme Court's decision in *Serrano v. Priest* (1976) 18 C.3d 728. In that landmark case the court held that the California public school financing scheme violated constitutional equal protection guarantees by basing the availability of school revenues upon district wealth. The aftermath of the Serrano decision was state equalization of each district's allowable revenue limit and apportionment of state aid funds as the difference between that revenue limit and the district's proportional share of the county's local property tax revenues. Districts which receive a relatively greater share as a result of property tax revenues receive less money from the state.

Nonetheless, prior to Proposition 13 schools traditionally relied upon property taxes as a major revenue source. Proposition 13 affected schools by reducing this local income and making them more dependent upon state funding. Impact fee legislation passed in the early 1980's to fund interim school facilities provided some relief, but required the cooperation of affected cities and counties in levying a fee (revenue would be collected by the city or county and then transferred to the district). The 1984 California State Lottery Act provided schools with a new income source. However, lottery funds cannot be used for capital improvements such as school buildings (Government Code section 8880).

Today, squeezed between reduced property tax derived income and increased population, schools are employing several alternatives for funding new school construction. The following methods give school districts some measure of local control over financing.

Developer Fees

Unlike cities and counties, school districts do not have independent police power authority to impose development fees. Their authority to impose this kind of fee derives solely from Government Code section 53080 (note: in 1998, this section will be recodified as Education Code section 17620, pursuant to SB 1562 of 1996) and is subject to the limits discussed below (*California Building Industry Association v. Newhall School District, etc. et al.* (1988) 206 Cal.App.3d 212).

In 1986, the State Legislature approved AB 2926 (Chap. 887) which authorized school districts to levy development fees and at the same time placed a cap on the total amount of fees that could be levied. This method of financing new facilities immediately came into widespread use. In brief, it enables school districts to directly impose developer fees to pay for new school construction (Government Code section 53080). It also establishes that the maximum fees (adjustable for inflation) which may be collected under this and any other school fee authorization are $1.50/square foot of residential development and $0.25/square foot of commercial and industrial space (Government Code section 65995).

Legislative actions since 1986 have alternatively expanded and contracted the limits placed on school fees by AB 2926. In addition, AB 1600 of 1987 (discussed in Chapter II) has established a requirement that there be a nexus between school fees and the impacts created by new development. The current state of school exactions is summarized in the following paragraphs.

School districts may only impose fees, charges and dedications upon new industrial or commercial and new or other residential development as follows:

- Exactions shall be limited to $1.50 per square foot of "assessable space" for residential projects and $0.25 per square foot of "chargeable covered and enclosed space" for commercial or industrial projects. These amounts will be adjusted for inflation every two years. (Government Code section 65995) These limits apply to administrative actions which impose fees on development projects.
- New residential development shall be assessed on the basis of the number of square feet within the perimeter of the structure, not including any carport, walkway, garage, overhang, patio, detached accessory structure, or other similar area ("assessable space" under Government Code section 65995 (b) (1)).
- Fees, charges or dedications for other residential development can only be imposed if the development will result in a net increase in assessable space of 500 square feet or more. (Government Code section 53080).
- For purposes of determining the amount to be charged to industrial or commercial development, the square foot area of any structure existing on the site as of issuance of the first building permit shall not be counted. (Government Code section 53080).
- The fees, etc. collected pursuant to this statute cannot be used for regular maintenance or repair of school buildings or facilities, asbestos testing or removal activities, nor for deferred maintenance. These fees may, however, be used to pay for certain limited administrative costs. (Government Code section 53080).
- Commercial development shall be assessed on the basis of the number of square feet within the building perimeter, not including storage areas, parking structures, unenclosed walkways, or utility areas ("chargeable covered and enclosed space" under Government Code section 65995 (b)(2)).
- A school district may require fees from commercial or industrial development on either an individual basis or on the basis of categories of commercial or industrial development. Prior to imposing the fee, the district must conduct a study to determine the impact of the anticipated increase in commercial or industrial employees on the cost of providing school facilities. This study forms the basis of the district's findings under section 66000 et seq.

The study must include employee generation estimates that are made by the district or based on the January 1990 edition of "San Diego Traffic Generators," a report of the San Diego Association of Governments. (Government Code sections 53080.1) Similar requirements were discussed in *Balch Enterprises v. New Haven Unified School District* (1990) 219 Cal.App.3d 783 which overturned commercial and industrial development fees imposed by a school district in Hayward and Union City.

If fees are charged, the district must also provide the opportunity to appeal those fees on an individual basis. The party making the appeal carries the burden of proving that the fee was improper (Government Code section 53080.1).

- The school board may contract with the affected city or county for the purpose of having the city or county collect these exactions on behalf of the school district. (Government Code section 53080).
- The school board must hold a noticed public hearing prior to adopting or increasing a development exaction. The resolution enacting the exaction must contain findings in accordance with the provisions of Government Code sections 66000 et seq. In particular, the district must describe the impacts upon school facilities anticipated as a result of the commercial or industrial development. Upon adopting a resolution, the school board must notify all affected cities and counties in detail.

A resolution imposing development exactions takes effect 60 days after its passage. The statute allows a school board, upon four-fifths vote of its membership, to pass an urgency resolution imposing the exaction immediately. Any party upon which an exaction is imposed may protest or appeal the exaction. (Government Code section 53080.1).

- When notified of a school facility fee, a city or county must not issue a building permit to an affected development project until the school district has certified that the project has either paid the fee or is not subject to the exaction. (Government Code section 53080). School fees are not subject to the requirement of Government Code section 66007 that restricts fee collection to that time when a final inspection is made of the project or a certificate of final occupancy is issued (*RRLH, Inc. v. Saddleback Valley Unified School District* (1990) 222 Cal.App.3d 1602).
- Exactions under section 53080 shall not be levied on the reconstruction of any residential, commercial, or industrial structure destroyed as the result of a disaster such as a fire, earthquake, landslide, flood, or tidal wave. Exactions can be levied on that portion of the reconstructed structure, if any, that exceeds the square footage of the original structure. (Government Code section 53080.6).
- Exactions levied on new construction of senior citizen housing, a residential care facility for the elderly or a multilevel facility for the elderly are limited to $0.25 per square foot of chargeable covered and enclosed space. Such structures may be issued building permits allowing them to be converted to another use upon certification by the school district that all required school facilities exactions have been paid. (Government Code section 65995.1).
- Motels, hotels, inns and other short-term lodgings are considered to be commercial or industrial development for the purposes of section 53080. (Government Code section 65995).
- Exactions cannot be levied on a facility that is used exclusively for religious worship, owned and occupied by state, federal or local government, or is used exclusively as a private full-time day school. (Government Code section 65995).

The School Facilities Act (Government Code section 65970) provides a means for overcrowded school districts to receive fees for interim school facilities necessitated by new residential development. Such districts, upon making written findings of overcrowding and establishing a schedule of fees to pay for the interim facilities, must request that the local city council or board of supervisors adopt an ordinance imposing such fees. Fees are collected by the local government, placed in a separate account for the school district, and disbursed to the district each year.

The Schools Facilities Act differs from AB 2926 in that the district must be deemed overcrowded by the local school board in order for exactions to be levied. Further, the fee is always levied and collected by the local city or county on behalf of the school district (and upon the district's request). Previously, fees collected under the School Facilities Act could only be used for interim facilities. However, new law now enables a school district board that receives fees collected under a local regulation in existence on September 1, 1986 to use those funds for any "construction or reconstruction" allowable under section 53080, provided that the board first holds a public hearing on the subject of the proposed expenditure (Government Code section 65974.5).

AB 2926, on the other hand, is not restricted to overcrowded districts, the resulting funds may be used for either interim or permanent facilities, and fees are imposed directly by the school district. Because AB 2926 allows for the funding of permanent facilities, it has generally supplanted the use of the School Facilities Act.

School fees are subject to certain additional statutory restrictions:

- The legislature has declared that the subject of financing school facilities with development fees is a matter of statewide concern. Accordingly, the legislation described above occupies the field of mandatory development fees for school construction to the exclusion of all other local ordinances. (Government Code section 65995).
- The fee nexus and accounting requirements of the Mitigation Fee Act (Government Code section 66000 et seq.) apply to all school district exactions. The court in Shapell Industries v. Governing Board of the Milpitas Unified School District (1991) 1 Cal.App.4th 218 held that the developer is responsible only for that share of school need caused by new development, and set forth a three-part method for determining fees. First, since the fee is to be assessed per square foot of development, there must be a projection of the total amount of new housing expected to be built within the district. Second, in order to measure the extent of the burden imposed on schools by new development, the District must determine approximately how many students will be generated by the new housing. And finally, the District must estimate what it will cost to provide the necessary school facilities for that approximate number of new students. As noted in Chapter IV, the *Loyola Marymount* case has held that the higher scrutiny of the two-part *Nollan/Dolan* test does not apply to school fees.
- The fee cap established under these laws is the total amount of fees which may be levied for school facilities (Government Code section 65995). This includes fees intended to mitigate an environmental effect under the California Environmental Quality Act (Government Code section 65996). The fee cap does not apply to special taxes imposed under the Mello-Roos Community Facilities Act (Government Code section 65995; *Western/California Ltd. v. Dry Creek Joint Elementary School District* (1996) 50 Cal.App.4th 1461).
- When a school district establishes a Mello-Roos Community Facilities District (CFD) to finance the acquisition or improvement of school facilities, the property within that CFD is exempted from paying "any fee or other requirement" levied to benefit another school district if the fee was levied after the resolution of formation of the CFD was adopted. The affected school districts can, however, mutually agree upon other arrangements. This law took effect on September 30, 1989. (Government Code section 53313.4).
- Fees imposed on any mobilehome or manufactured home located within a mobilehome park or mobilehome subdivision that is limited to residence by older persons, cannot exceed those imposed on commercial or industrial development. If such a mobilehome park or mobilehome subdivision subsequently decides to permit residents other than older persons, it must notify the affected school district. Subsequent home installations for younger persons will be subject to residential fees. (Government Code section 65995.2).

Mello-Roos Act

The Mello-Roos Community Facilities District Act (Government Code section 53311 et seq.) allows financing districts to be established to fund school construction. The owners of land within the boundaries of a Mello-Roos Community Facilities District (CFD) are assessed a special tax to finance specific improvements within that district. Mello-Roos special taxes must be approved by 2/3 of the voters within the proposed CFD or, when the district has fewer than 12 property owners, by majority vote of the owners. Property owner elections may be held by mailed ballot, when approved by the county registrar of voters. The Rocklin Unified School District used this method in February 1989 when it created a 4454-acre Mello-Roos district to fund school construction in a rural area slated for rapid development. This taxing district will help finance six new K-6 schools and cost the eventual homeowners up to $400 per year. Proceeds from a Mello-Roos tax can be used to directly fund improvements such as new schools and also, if bonds have been issued, pay debt service on those bonds.

Mello-Roos financing affects the matching funds available from the State for school construction under the Leroy F. Greene State School Building Lease-Purchase Law of 1976. Under certain conditions, the amount of matching funds that the local school district must put up will be reduced by the amount of funding received as a result of CFD special taxes (Education Code section 17705.6). In effect, the funding provided by the CFD is counted toward the local matching share.

One advantage of the Mello-Roos Act over other sorts of financing is that it allows a school district to establish a financing district that does not include all the land within the boundaries of the school district. This means that newly developing areas, where demand for additional school facilities is greatest, can be isolated from those parts of the district in which facilities are adequate or where demand is otherwise low.

The Elk Grove Unified School District in Sacramento County made good use of this aspect of the Mello-Roos Act when faced with neighborhood opposition to its proposed special tax and school bonds. After its first attempt at forming a Mello-Roos CFD failed narrowly, the Elk Grove USD redrew the boundaries of the proposed financing district to eliminate mobilehome parks where citizens tended to be elderly and generally in opposition to the special tax. On its second attempt, the Mello-Roos district and its maximum bond issue limit of $70,000,000 were successfully ratified. The proceeds of the CFD will be used in conjunction with developer fees and state funds to meet the district's planned facility needs.

As of the end of 1988, the following were among the school districts using Mello-Roos financing:

- Chino Unified School District;
- Corona-Norco Unified School District;
- Elk Grove Unified School District;
- Empire Union School District (Stanislaus County);
- Etiwanda School District (San Bernardino);
- Fairfield-Suisun Unified School District;
- Irvine Unified School District;
- Mountain View School District;
- Oroville Elementary School District;
- Riverside Unified School District;
- Saddleback Valley Unified School District (Orange County);
- Sacramento City Unified School District;
- Tracy Area Public Facilities Financing Agency;

- Vallejo City Unified School District;
- Val Verde School District (Riverside County); and
- William S. Hart Union High School District

By the end of 1988, approximately $175 million worth of Mello-Roos bonds had been issued to finance school construction or for other educational uses. Of this total, approximately $85 million worth were sold in 1988 alone.

General Obligation Bonds

As a result of the passage of Proposition 46 in 1986, cities, counties, and school districts are again empowered to issue general obligation (G.O.) bonds to finance land acquisition and capital improvements, subject to voter approval. G.O. bonds are repaid with the revenues from increased property taxes (authorized by local voters as part of the G.O. bond measure). Approval by two-thirds of the voters within the school district is required for passage of a G.O. bond measure.

Statewide, the rate of passage for G.O. bond issues has averaged about 50%. The success rate was substantially higher in the first half of 1997. The amount of money being raised by bonds is considerable. Some $327 million worth of school bonds were approved in five Los Angeles basin districts in the June 1997 election alone.

Special Taxes

School districts may impose special taxes in the same manner as counties and cities, provided that the tax applies uniformly to all taxpayers or all real property within the district. This rule of uniformity contains an exception allowing taxpayers 65 years of age or older to be exempted from this kind of special tax. Under the provisions of Government Code section 50079, "qualified special taxes" (also called parcel taxes) may only be imposed when 2/3 of the school district's voters approve the school board's specific proposal for such a tax.

Proposition 218 has defined school districts as "special districts" for purposes of defining the type of taxes which a school district may impose and the voting requirements for those taxes. Under Article XIIIC of the California Constitution, a school district "shall have no power to levy general taxes." Taxes imposed by a school district, even if placed into the general fund of that district, are considered "special taxes" and cannot be imposed, extended or increased without approval of 2/3 of the district's voters.

According to information compiled by the School Service of California and Cal-Tax, 63 special tax elections for schools were held during the period between 1983 and April of 1988 with one-in-three being approved. Taxes proposed since that time have fared similarly

California Building Industry Association v. Newhall School District (1988) 206 Cal.App.3d 212 illustrates how careful school districts must be when creating a special tax. In overturning alleged special taxes in five Santa Clarita Valley school districts the Court of Appeal concluded that they were not special taxes because: (1) they applied solely to developers rather than uniformly to all taxpayers or landowners in the district; (2) they could be characterized as a development fee because they did not exceed the cost of contemplated school facilities and were imposed solely on those who were seeking to develop land; and, (3) at that time, school districts had no specific legislative authorization to levy special taxes (this has since been rectified by Government Code section 50079). Furthermore, the court held that because the exaction exceeded the limits imposed on development fees by Government Code section 65995, it was not valid as a development fee either.

Grupe Development Co. v. Superior Court (1993) 4 Cal.4th 911 is a recent court case which rules out the use of special taxes in districts which have levied full developer fees. In overturning a special tax levied by the Chino Unified School District, the state Supreme Court concluded that Government Code Section 65995 preempts all school district authority to levy special taxes for school construction if such taxes would cause the district to exceed the fee cap stipulated in the code, even though special taxes except for Mello-Roos taxesare not explicitly mentioned in the code. This decision was based on the language of section 65995 which placed a cap on fees of $1.50 per square foot of accessible space in residential dwellings. While exempting Mello-Roos taxes from this limit, the court concluded that as a matter of statutory construction, the explicit exemption of Mello-Roos special taxes indicated that the cap applied to all other special taxes. The court held that the intent of the legislature was to strike a balance between the need for adequate school facilities and affordable housing. The court said that "It would manifestly upset that balance to construe section 65995 to allow school districts to collect - as the District does here - special taxes to offset development costs *in addition to* the maximum amount authorized" under the code.

Special Assessments

In recent years, there has been a debate over whether a school district may impose assessments under the Landscaping and Lighting Act of 1972 for the maintenance of school yards. School districts have argued that they should be able to utilize the Act because they may be considered "special districts" for purposes of the Act and because they are authorized to undertake the sorts of improvements and carry out maintenance which the Act could finance. Further, they are statutorily authorized to make their facilities and grounds available for public use as civic centers and thereby offer a benefit to surrounding properties. Others have contended that the Act was not intended to apply to schools and in the absence of explicit reference, school districts should not be considered special districts under the Act.

The California Second District Court of Appeal rendered an opinion in May 1993 affirming the ability of two Southern California school districts to levy assessments to pay for the maintenance of school auditoriums, meeting rooms, gyms, stadiums, recreation and civic centers for the surrounding community (*Howard Jarvis Taxpayers Association v. Whittier Union School District* (1993) 15 Cal.App.4th 730). The court held that a school district is a special district for purposes of the 1972 Act. In addition, the levy of this special assessment by the districts does not violate the *Serrano* principle that limits the imposition of ad valorum property taxes that would make the quality of educational opportunity dependent upon the wealth of the school district's property owners. The assessment is not based on property value, but rather on the relative degree of benefit which a parcel derives from the community facilities provided by the school.

In this case, the assessments were not levied for educational purposes (which was not approved by the court), but to finance recreational improvements to benefit the community. The districts demonstrated this by limiting their assessments to that portion of the total facility use that could be attributed to community activities.

This case does not offer *carte blanche* to school districts for the use of the Landscaping and Lighting Act. It does illustrate that a carefully designed assessment, limited strictly to financing those community facilities which the school provides, may offer an alternative financing method.

These assessments are subject to the voting requirements and are limited by Proposition 218 to properties which can be shown to derive a "special benefit" from the assessment (see Chapter III). Proposition 218 raises a substantial hurdle before districts that wish to use the Landscaping and Lighting Act.

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Chapter 6

Leasing

For the most part, public agencies own their public facilities and equipment. However, leasing is becoming a popular alternative to outright purchase or issuing bonds to finance capital assets over a period of several years. Any agency authorized to acquire or dispose of real or personal property can enter into a lease. Counties, cities, school districts, and redevelopment agencies use this method of financing relatively commonly. For convenience, we will sometimes refer to all these local agencies as jurisdictions.

Lease financing is based upon a jurisdiction's authority to acquire and dispose of property rather than on its authority to incur debt. As a result, under state law, a properly constructed lease is not considered a public debt.

"Lease-purchase" agreements (in which the agency leases a facility while purchasing it) and "sale-leaseback" agreements (in which the agency sells a facility to a lessor and then immediately leases it back) offer several advantages over other financing methods. First, an agency can obtain a facility without a large initial investment. Second, the agency can obtain quick cash for a facility (although the cost of repaying the lease will exceed the sale price). Third, a lease can be used to spread the cost of a facility over a long period of time. Fourth, lease agreements do not contribute to a jurisdiction's Gann spending limit. Fifth, voter approval is not a requirement as it would be with special taxes and some types of bonds.

Using lease financing is not without its drawbacks. The agreements necessary to finance large capital facilities are complicated and involve numerous players such as bond counsel, underwriter, and trustee. Leasing, because of the uncertainties of the market and annual allocation of payments, may require higher debt payment than bonds in order to attract investors. Additionally, because leases are designed to be tax-exempt investments, their popularity and marketability is susceptible to changes in federal or state tax law. Also, it may be difficult to find single investors for some leases. Unlike special assessments or taxes, a lease does not generate funds on its own and requires another source of income to pay it off.

When a local agency enters into a lease arrangement (thereby becoming the leasee), it may lease a facility from another public agency, a nonprofit corporation set up for that purpose, a bank or private leasing company or a joint powers authority. This lessor assigns all its rights in the leased property or equipment to the lessee or trustee and acts as an intermediary between the local agency and the investors. The trick to leasing is finding someone who is willing to invest in the return from the agency's lease payments. This may be a single investor or, more frequently, a group of investors who have purchased undivided shares of the lease obligation (these shares are called "certificates of participation").

When a single investor is involved, that investor will generally be the lessor. The municipality leases a facility or equipment from the investor. As lessor, the investor then receives a portion of each rental payment as tax-exempt interest.

Certificates of Participation

Certificates of participation (COPs) are securities designed to make municipal leases accessible to the small investor by dividing the lease obligation into small parts. Each COP is an undivided share of the total lease obligation. The lessor assigns the lease to a trustee who then sells COPs in the lease. Purchasing a COP entitles the investor to a portion of the jurisdiction's lease payments. COPs are generally available in denominations of $5000 and marketed by firms specializing in municipal securities. Investors buy COPs as a source of tax-free interest income, so it is extremely important to be sure that the lease is structured in accordance with federal and state tax laws. Bond counsel and qualified financial advisors should be consulted when giving serious consideration to a COP issue.

Some examples of COPs include:

- Carlsbad's $8.7 million COP issue in 1988 financed the purchase of a 52-acre open space parcel.
- Colton sold $2,445,000 worth of COPs to finance multiple capital improvements in 1988.
- The City of Compton and the Compton Redevelopment Agency issued a $11,025,000 COP to refinance the city hall (thereby lowering the city's payments) and establish a $5 million self-insurance liability reserve.
- Cupertino sold $5 million worth of COPs in July 1989 to finance park improvements.
- The Hayward Unified School District issued a $2.5 million COP to finance K-12 school construction in 1988.
- The Humboldt Community Services District has issued a COP for over $1 million to finance water storage and distribution facilities.
- The City of Los Angeles issued COPs valued at $52,185,000 to finance equipment purchases including sanitation trucks, fire trucks, street maintenance equipment, and emergency vehicles.
- The Mid Carmel Valley Fire Protection District issued a $600,000 COP for buildings in July 1988.
- Rancho Cucamonga sold over $2.87 million worth of COPs to finance park improvements in December 1988.
- Santa Cruz County financed road improvements, buildings, and equipment worth $11,260,000 with two COP issues in 1983.
- The Vallejo Sanitation and Flood Control District sold COPs worth $12 million to finance wastewater collection and treatment facilities.
- Woodside used a COP in 1987 to finance $1.85 million worth of sewer pump station improvements.

Local agencies with projects that are too small to attract investors or to otherwise be feasible for lease financing have recently discovered the advantages of pooled COP issues. By pooling the COPs for several projects, several agencies can work together to minimize the costs of initiation and issuance. Economies of scale allow each local agency to minimize its costs of issuing a COP and may reduce the interest that must be paid on the lease. Because the use of COPs allows the project to be financed by many small investors rather than one large one, it increases the pool of potential investors.

Pooled COPS are offered through a Joint Powers Authority (JPA) created by the entities involved. Once the JPA is formed, it can be used repeatedly for additional COPs. However, all the leases being offered through each issuance of COPs must be entered into simultaneously. The economies of scale involved in pooled leasing are directly related to the size of the anticipated lease.

Here are two examples of pooled COPs. Los Angeles County schools issued pooled COPs worth $23 million in June 1987. In 1982, the cities of Arcata, Cloverdale, Healdsburg, Sebastopol, and Sonoma, acting as the Redwood Empire Financing Authority, issued COPs for over $1.54 million to finance fire station renovation and expansion, storm drain improvements, street lighting, and other utility improvements. See The Use of Pool Financing Techniques in California, published by the California Debt and Investment Advisory Commission, for detailed information on pooled COPs.

Lease Revenue Bonds

California law allows certain public entities to issue lease revenue bonds to finance capital improvements that are then leased to a public agency. The bonds' debt service is repaid from lease payments received from a public agency other than the issuer of the bonds. Again, this financing tool is designed to avoid classification as a debt and to be exempt from both Proposition 13 and Gann limit restrictions.

Lease revenue bonds may be issued by a nonprofit corporation under the Nonprofit Public Benefit Corporation Law (Corporations Code sections 5110 et seq.) and the Public Leaseback Act (Gov. Code sections 54240 et seq.), a parking authority created under the Parking Law of 1949 (Streets and Highways Code sections 32500 et seq.), a redevelopment agency (Health and Safety Code sections 33000 et seq.), or a joint powers authority under the Joint Exercise of Powers Act (Gov. Code sections 6500 et seq.). In general, lease revenue bonds may be more expensive to issue than general obligation bonds. Their advantages include the lack of a public vote requirement.

Sale-leaseback

In some ways, a sale-leaseback arrangement resembles the refinancing of a home. It allows a local agency to get money out of an existing facility or equipment and to pay the money back over time. Briefly, a sale-leaseback works like this: the municipality sells a facility or equipment to an entity such as a non-profit organization, an investor or a group of investors. The municipality then leases the facility or equipment for the period of time and at the rate of payment necessary to eventually buy it back, with interest.

Sale-leaseback has advantages for both investors and the municipality involved. The investor receives a stream of payments and interest from the local agency. If properly structured, these will be non-taxable. The local agency receives an infusion of cash which it may pay back in installments, while still being able to use the facility or equipment.

Lease-payback

This type of lease arrangement is a bit like leasing an automobile. It works like this: under agreement with a local agency, an investor or investors will construct a facility or obtain equipment for that agency. The agency then leases the facility or equipment from the investor at a rate sufficient to eventually pay for the cost of the facility or equipment, with interest. Upon completion of the payment schedule, the facility or equipment will become the local agency's property. Like the sale-leaseback agreement, investors are attracted to this arrangement by its tax-free return. Municipalities like it because it allows them to obtain property without a large initial investment and to pay it off in installments.

Whether any lease arrangement will be economical for the local agency depends upon a variety of factors including market conditions, the current tax laws, the structure of the lease, and the relative costs of other methods of financing. Local agencies should carefully evaluate these factors and compare their costs to other financing methods before entering into lease financing.

Two fine general sources of information on lease financing are the California Debt and Investment Advisory Commission's California Debt Issuance Primer and Guidelines for Leases and Certificates of Participation (CDAC 93-8), available from the Commission.

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Chapter 7

Other Methods

General Obligation Bonds

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General Obligation Bonds

In June 1986, California voters approved Proposition 46, a constitutional amendment that restored to county, city, and school districts the authority to issue general obligation (G.O.) bonds. Each local G.O. bond measure requires approval by 2/3 of the jurisdiction's voters. These bonds are used to finance the acquisition and construction of public capital facilities and real property (see Government Code sections 29900 et seq., 43600 et seq., and Education Code section 15100 et seq., respectively). Bond proceeds cannot be used for equipment purchases nor to pay for operations and maintenance. Certain other local governments are also authorized to issue G.O. bonds upon voter approval, under specific legislation.

The local entity's governing body initiates a G.O. bond election by passing a resolution placing the proposed bond issue on the ballot. The resolution must specify the public project to be financed. Voter election packets must include information about the proposed increase in the tax rate, ballot arguments, and the specific uses of the proceeds of the bonds. If sources of income other than property taxes are to be used to service the bonds, the voter pamphlet must disclose the effects of that upon the projected tax rate.

The jurisdiction issuing a G.O. bond is authorized to levy an ad valorem property tax at the rate necessary to repay the principal and interest of the bonds. The property taxes being appropriated to a G.O. bond issue do not count towards the jurisdiction's Gann appropriations limit. State law sets the maximum indebtedness which entities may incur through G.O. bond issues. General law cities are limited to 15% of the assessed valuation of all real and personal property within their boundaries. Counties are limited to 5% of their assessed valuations. A unified school district is limited to 2-1/2% of its assessed valuation and an elementary or high school district is limited to 1-1/4% (Education Code sections 15106 and 15102).

G.O. bonds are backed by the full faith and credit of the issuing jurisdiction and are paid for by increasing local property taxes above the limit imposed by Proposition 13. This security is attractive to potential investors. Accordingly, G.O. bonds will generally carry a moderate interest rate. In addition, G.O. bond issues do not require a reserve fund during construction of the authorized capital improvement.

November 1986 was the first opportunity for localities to reenter the G.O. bond market since the passage of Proposition 13 in 1978. Eight of the 17 local measures proposed around the state were approved. Projects to be financed included new schools in Bakersfield and Clovis, a police building and jail in Pasadena, an adult/juvenile detention center in Los Angeles County, fire protection system improvements in San Francisco, purchase and renovation of a new civic center in Auburn, highway widening in Suisun City, and a wastewater treatment facility in Sebastopol.

G.O. bonds are increasingly popular. According to the California Debt and Investment advisory Commission, there were 27 G.O. bond measures on local ballots for the November 1996 election. Fourteen of these passed; of the 13 that failed, nine had received more than 60 percent of the vote.

Here are some examples of the G.O. bonds approved in November 1996:

- the Goleta Union School District in Santa Barbara County received authorization for $26 million to finance K-12 school facilities;
- the Peralta Community College District's voters approved an $8 million dollar bond issue for facilities improvements; and,
- Berkeley voters passed a $49 million measure to finance the seismic-safety retrofitting of its civic center and main library.

Public Enterprise Revenue Bonds

Cities and counties can issue bonds to finance facilities for revenue-producing public enterprises. This allows local governments to finance facilities, such as airports, water systems, sewer systems, and bridges, that can pay for themselves through service charges, connection fees, tolls, admission fees, and rents.

Revenue bonds do not require approval by two-thirds vote since they are neither payable from taxes, nor from the general fund. They are paid solely from a special fund consisting of the revenues generated by the facility being financed. Additionally, because the debt from revenue bonds in not generally a debt of the issuer, revenue bonds are not subject to the Gann limit.

The Revenue Bond Law of 1941 (Government Code sections 54300 et seq.) is the most popular of the many revenue bond acts available (a comprehensive list of these statutes can be found in the California Debt Issuance

Primer published by the California Debt and Investment Advisory Commission). Under the 1941 Act, bonds may be issued for:

- water supply and distribution;
- garbage collection and disposal;
- sewage collection and treatment;
- parking;
- ferries;
- airports;
- harbors;
- hospitals;
- golf courses; and,
- electric generation and transmission.

These bonds may also finance the land, vehicles, facilities necessary to the allowable enterprises.

Bonds are authorized pursuant to the 1941 Act by resolution of the city's or county's legislative body, subject to approval by a simple majority of the voters voting on the bond measure. The legislative body's resolution must state the purpose for which the bonds are proposed, the estimated cost of construction, improvement, and financing, the principal amount of the bonds, and the rate of interest. Furthermore, it must set a date for election and fix the particulars of that election. The 1941 Act goes on to establish the specific procedures for issuing these bonds.

Examples of public enterprise revenue bonds include the following. In 1987, the City of Napa sold $16 million of bonds to use for refunding debt on water supply facilities and San Francisco sold over $106 million for the same purpose. In late 1988, San Franciso issued $45 million in bonds for wastewater collection and treatment facilities. At nearly the same time, Los Angeles was issuing $125 million worth of bonds for the same purpose. The Cambria Community Services District offered $1.32 million worth of bonds to refund debt associated with a wastewater treatment plant in 1989.

Joint Powers Agreements

A joint powers agreement (Government Code section 6500 et seq.) allows two or more agencies to jointly wield powers that are common to them. It does not create new powers, but instead provides a vehicle for the cooperative use of existing governmental powers. Agencies which may enter into joint exercise of powers agreements include the federal and state governments, cities, counties, county school boards, public districts, and public agencies of other states. A joint powers authority can enter into contracts, employ people, acquire, construct and maintain buildings, improvements and public works, and issue revenue bonds. The member agencies can also agree to exchange services.

The number of JPAs statewide has increased from 275 in fiscal year 1977-78 to 575 in fiscal year 1985-86 as agencies have found that creating a JPA can be a cost-efficient way to finance public buildings, capital improvements, police and fire protection, emergency medical services, libraries, and transportation. Self-insurance pools have accounted for a significant part of this increase. However, most JPAs are still concerned with providing infrastructure and services.

Examples of the use of joint powers agreements abound:

- the Councils of Government established as regional planning agencies around the state;
- the Orange County Major Thouroughfares and Bridge Funding Program (Orange County and its cities) being used to finance the construction of four major highway corridors;
- the Pomona Valley Transportation Authority (cities of Claremont, La Verne, Pomona, and San Dimas) providing transportation services;
- the North/Central Water Policy Planning Task Force (Santa Cruz County, Santa Cruz, Scotts Valley, Capitola, and five water supply agencies) formed to cooperatively plan for future water needs in Santa Cruz County; and,
- the Redwood Empire Financing Authority (Cloverdale, Healdsburg, Sebastopol, Sonoma, Arcata, and others) created to pool certificates of participation to fund public improvements.

A joint powers agreement must describe the purpose for which it is being entered into, the power to be wielded jointly, the method by which its purpose is to be accomplished, and the manner in which the powers are to be exercised. The agreement may be administered by one or more of the agreeing parties, by a commission or board created as part of the agreement, or by a person, firm or corporation designated in the agreement.

Money for projects to be completed under joint powers authorities is provided by the member agencies in a manner prescribed in the agreement of formation. The Orange County Major Thoroughfares and Bridge Funding Program uses funds collected by the county and cities as part of subdivision approvals. The JPA may be used as the leasor in a lease-purchase agreement. Agencies may pool equipment and manpower more efficiently than they could operate separately. In other words, the sources of income for a JPA are not limited to tax revenues. Additionally, joint powers authorities may issue revenue bonds for a long list of projects including:

- exhibition and fair buildings;
- stadiums or sports arenas;
- public buildings, including administrative facilities;
- regional or local public parks;
- mass transit facilities or vehicles;
- water supply or sewer facilities;
- criminal justice facilities;
- police or fire stations;
- local streets, roads and bridges;
- public libraries;
- low-income housing;
- public improvements related to redevelopment; and
- public improvements installed under the Mello-Roos Act or the 1911, 1913 or 1915 improvement acts.

(Government Code section 6546)

Pooled Financing

"Pools" have become a popular method of bringing together several agencies for the purpose of jointly issuing public debt (i.e., bonds, COPs, etc.). According to the California Debt and Investment Advisory Commission's publication The Use of Pool Financing Techniques in California, the first pools in California were joint-use facility pools issued by joint powers authorities to finance capital improvement projects such as drainage systems which crossed jurisdictional lines. Now a variety of techniques are being employed to finance projects including water transmission facilities, wastewater management, and public buildings.

Pool financing techniques include:

- joint-use facility pools, where public agencies create a joint powers authority to develop, finance, and operate a project that will benefit the various agencies and which crosses jurisdictional lines;
- dedicated pools, in which a JPA or other joint authority issues debt on behalf of a known participant for a specific project;
- blind pools, in which a JPA issues debt prior to specifying the participants in the debt or the projects being financed; and,
- composite issues, which market together two or more separate debt issues from one or more issuers.

In all the above methods, except for composite issues, the investor is purchasing a percentage of the debt being issued and accepts the credit risk of all the participants acting under the joint authority. In a composite issue, the debt is pooled only for purposes of marketing and an investor accepts the credit risk of the particular issuer whose debt they have purchased. The California Debt and Investment Advisory Commission notes that pools are useful for public agencies with little or no potential by themselves for entering public debt markets, but that they cannot substitute for the basic criterion that the agency be able to repay its debts.

Pool financing, in its various guises, is too complex a subject to be adequately discussed in this short section. For a detailed examination of pooled financing methods, see The Use of Pool Financing Techniques in California: A Look at Joint Issuance Techniques, published by the California Debt and Investment Advisory Commission. It carefully and impartially reviews the types of pooled financing that are currently available and describes their characteristics.

In 1996, the State Treasurer became very concerned over several bond pools which may have played fast and loose with the Marks-Roos Bond Pooling Act. These cases involved pools where the projects to be financed were not identified prior to issuance of the bonds and the agencies making up the JPA did not make the required finding that the financing would result in significant public (as opposed to private) benefit. While expressing a fear that these transactions were compromising the integrity of the municipal market, both with regard to the legality of the issuance and allegedly inadequate public disclosure of risks, the Treasurer asked both the State Attorney General and the Federal Security and Exchange Commission to investigate. As of this writing, the situation has not been resolved.

County Service Areas

(Government Code section 25210.1 et seq.)

The County Service Area Law was enacted in the early 1950's to enable counties to localize the provision and financing of expanded services, such as street lighting or flood control, in areas which desired or needed a higher level of public service. For example, when a county provides extra services to an urbanized unincorporated area through a CSA, the residents in the rural areas of the county who don't receive those services are not charged for them. By establishing county service areas (CSAs), counties may identify those areas which desire a higher level of specific services than those already uniformly provided within the entire county (including the cities). These extended services are financed by the taxpayers of the CSA. By isolating the extra services provided within the CSA, the county can insure that the additional services are paid for only by those who will receive them.

CSAs are relatively versatile mechanisms. They can provide any of a wide range of municipal services. A CSA may encompass all of the county's unincorporated area (Gov. Code section 25210.4c) or only selected portions. CSAs are limited, however, by the county's ability to show that the proposed level of extended service is not otherwise provided on a countywide basis.

CSAs are the most common type of special district in the state. The use of CSAs has increased steadily since the passage of Proposition 13. According to information compiled by the State Controller, in fiscal year 1977-78 there were 701 CSAs in California, of which 563 were active. By fiscal year 1986-87, that number had grown to 816 (of which 661 were active) despite the inevitable loss of CSAs due to new city incorporation. Fast-growing counties such as Orange, Riverside, Sacramento, and San Bernardino have substantially increased their use of CSAs since fiscal year 1977-78. So have developing rural counties such as El Dorado, Kern, and Tulare.

Powers

Pursuant to Government Code section 25210.4, a CSA can provide one or more of the following extended services:

- extended police protection;
- structural fire protection, including fire prevention, hazard abatement, and fire code enforcement (Government Code section 25210.5);
- local park and recreation or parkway facilities and services;
- extended library services and facilities;
- limited television translator facilities and services;
- low-power television services; and,
- "miscellaneous extended services" which the county is authorized to perform, but which are not already performed on a countywide basis.

Government Code section 25210.4a defines miscellaneous extended services to include:

- water service
- sewer service
- pest control
- street sweeping
- street lighting
- refuse collection
- garbage collection
- ambulance service

- planning services
- soil conservation and drainage control
- animal control
- services provided by a municipal advisory council
- transportation services
- geologic hazard abatement
- "road maintenance," including construction, improvement, engineering and design services, land acquisition, and maintenance of streets, highways, and bridges. (The state attorney general opines that this includes snow removal service (65 Ops.Atty.Gen. 176 (1982)).

Funding

CSAs are empowered to levy ad valorem property taxes to pay for the extended services that they provide. Now that Proposition 13 has limited the availability of property taxes as a funding source, most recently created CSAs rely upon other financing methods.

- Legislation enacted in 1989 specifies that the board of supervisors may levy and collect a special tax in any CSA or CSA zone (Chap. 360). The special tax must be approved by two-thirds of the qualified electorate before it may be enacted. Such a tax must be applied uniformly to all taxpayers or real property within the CSA or zone (Government Code section 25210.6a).

  In June 1990, special taxes were approved by voters in Santa Barbara County's CSA No. 3 (Goleta) for library services and in Marin County's CSA No. 17, for police services. In November of that year, special taxes for paramedic services were approved in Marin County's CSAs No. 13 and 19.

- Pursuant to Government Code section 25210.77a, a county may "fix and collect charges" for the "miscellaneous extended services" provided by a CSA. This revenue may be "in lieu of, or supplemental to, revenue obtained from the levy of taxes." These charges do not constitute ad valorem property taxes in the opinion of the state attorney general (62 Ops.Atty.Gen. 831 (1979)).

  Accordingly, a CSA may use benefit assessments to finance any of the services enumerated under Government Code section 25210.4a. Assessments must be apportioned to each parcel in proportion to the estimated benefits the parcel receives from the services being provided. The charges must be calculated yearly and confirmed by the board of supervisors at a public hearing.

- Local park, recreation or parkway services provided by a CSA may be financed by benefit assessments under the authority granted by Government Code section 25210.66a.
- A CSA may levy sewer or water service standby and immediate availability charges, with certain limitations, based upon relative benefit (Gov. Code section 25210.77b).
- A CSA providing fire protection services is empowered to levy a fire suppression assessment under Government Code section 50078 (see Chapter III).
- CSAs may issue G.O. bonds for capital improvements (but not services), subject to two-thirds vote within the district (Government Code section 25211 et seq.). For example, in 1988 the Spring Valley Lakes CSA No. 2 in Lake County issued $200,000 worth of bonds to finance a water storage and distribution project. Furthermore, a CSA may establish improvement areas which will be separately taxed to pay for the bonded indebtedness incurred for improvements within each such area (Government Code section 25211 et seq.).

- As a county-dependent entity, the CSA may issue revenue bonds. For example, in early 1987 San Luis Obispo County's CSA No. 18 sold a $450,000 public enterprise bond issue to pay for wastewater collection and treatment related improvements.
- The county may establish zones of benefit within a CSA. These zones effectively allow the CSA to levy different tax rates, service charges or connection charges upon properties based upon the level of services that they are receiving (Government Code section 25210.8).

Under current law, benefit assessments cannot be used to fund extended police service, extended library services, limited television translator facilities and services, or low power television services. As with all other public agencies which levy taxes, fees, and assessements, CSAs are subject to Proposition 218.

Formation

Nearly all CSAs are "dependent" special districts. Their governing bodies are usually the county board of supervisors. A CSA is established by the county, subject to prior approval of the proposed district by the Local Agency Formation Commission (LAFCO). The county board of supervisors may initiate formation proceedings on its own volition, upon receipt of a petition signed by voters in the proposed area, upon receipt of a resolution from any city in the county, or upon the request of two members of the board. As a condition of its approval, the LAFCO may limit the powers of the CSA to those specifically approved by the county (expansion of those powers would then require subsequent approval by the LAFCO).

After approval by the LAFCO, the supervisors must either adopt a resolution of intention to establish a CSA or, if so authorized by the LAFCO, a resolution establishing the CSA without notice and hearing, and without an election. The resolution of intention describes the boundaries of the proposed CSA, the services that it is to provide, and sets a time and place for a public hearing on the matter. Public notice must be published in a newspaper of general circulation and a hearing held for the purpose of receiving protests from involved citizens. Proceedings must be abandoned if the county receives protests from either 50% or more of the registered voters or from 50% or more of the landowners. After conclusion of the hearing, the board may adopt a resolution which either: (1) establishes the CSA (and describes the area boundaries and services to be provided) without an election or, (2) establishes the CSA subject to confirmation by area voters at a special election. CSAs approved without an election may be subjected to referendum.

When establishing a CSA, the county must determine whether "specified services or the level of these services are being provided throughout the county on a uniform basis within and without cities" (*City of Santa Barbara v. County of Santa Barbara* (1974) 94 Cal.App.3d 277). The county must show that the proposed level of extended service is not already provided on a uniform basis.

Community Services District

(Government Code sections 61000 et seq.)

The community services district or CSD is a stalwart source of funding for services in both unincorporated and incorporated areas. Because it may be used to pay for a wide variety of facilities and services, the CSD is often looked upon as a sort of mini-government in its own right. As of fiscal year 1986-87 there were 280 CSDs (of which 262 are active). There were 212 CSDs in FY 1977-78, of which 200 were active. A number of rural counties, including Calaveras, El Dorado, Lake, Monterey, Nevada, and Yolo, have significantly increased their use of CSDs since 1978.

Powers

Government Code section 61600 provides that a CSD may exercise the following powers:

- supplying domestic, irrigation, sanitation, industrial, fire protection, and recreational water;
- collection, treatment, and disposal of sewage and storm water;
- garbage collection and disposal;
- fire protection;
- public recreation, including aquatic parks and recreational harbors, playgrounds, golf courses, swimming pools or recreation buildings;
- street lighting;
- mosquito abatement;
- equipment and maintenance of a police department or police protection;
- acquisition, construction and maintenance of library buildings and to provide library service (in cooperation with other agencies);
- construction, surfacing, and maintenance of streets (subject to the consent of the affected city or county);
- construction and improvement of bridges, culverts, drains, and curbs incidental to roads (subject to the consent of the affected city or county);
- undergrounding of existing overhead public utility lines;
- ambulance services (when approved by a majority of the voters in the district in an election for that purpose);
- providing and maintaining public airports;
- providing transportation services; and
- graffitti abatement.

Some CSDs have also been granted certain additional powers on an individual basis, such as the ability to construct and operate hydroelectric power generation facilities.

Funding

CSDs are empowered to levy ad valorem property taxes, general taxes, special taxes, special assessments (upon formation of an improvement district within the CSD), water standby and delivery charges, and "rates and other charges." The California Attorney General stated in a 1987 opinion that fees assessed against real property in a CSD must directly relate to the benefit being received (70 Ops.Cal.Atty.Gen. 153). A CSD may be broken into zones for the purpose of financing capital improvements or services that will benefit only limited areas of the CSD. Within each such zone, bonds may be issued, special rates or charges may be collected, or special taxes levied to pay for the improvements or services being provided.

The effect of Proposition 218 on Community Services District financing is unclear at this time. Section 2 of Article XIII C of the California Constitution now states that "[s]pecial purpose districts or agencies, including school districts, shall have no power to levy general taxes." Some argue that because a CSD is a multi-purpose, as opposed to "special purpose" special district (Proposition 218 defines "special district," but not the term "special purpose district"), the initiative's restriction on general taxes does not apply to CSDs. It will be up to the Legislature and the Courts to clear up this ambiguity.

Improvement districts to finance improvements or facilities authorized of a CSD may also be formed, as provided under irrigation district law (Water Code section 236000, et seq.). Assessments within an improvement district must be levied, collected, and enforced in practically the same manner as annual taxes. Further, advance public notice must be provided for new or increased assessments pursuant to Government Code section 54954.6.

Here are some examples of CSD project financing reported to the California Debt Advisory Commission:

- Glenn County's Northeast Willows County Services District issued $325,192 in special assessment bonds in October 1989 to finance a wastewater collection and treatment plant.
- In late 1988, the Vandenberg Village CSD in Santa Barbara County issued $1.6 million in public enterprise revenue bonds to finance wastewater collection and treatment and $3.8 million in similar bonds to finance water supply improvements.
- In 1987, the El Dorado Hills CSD in El Dorado County issued a $4 million G.O. bond to finance multiple capital improvements. Santa Barbara County's Los Alamos CSD issued a $474,000 special assessment bond to pay for wastewater treatment facilities. The Humboldt CSD issued COPs for $1.04 million to finance water supply and distribution improvements. The Lake Arrowhead CSD in San Bernardino County sold COPs worth $21.6 million to finance wastewater treatment facilities.
- In 1985, Marin County's Bel Marin Keys CSD issued $1.76 million of special assessment bonds for harbor improvements. Riverside County's Santa Rosa CSD issued $1.74 million of special assessment bonds for water supply and distribution improvements.

Formation

CSD formation proceedings are begun by filing a petition, signed by 10% or more of the proposed district's registered voters, with the county LAFCO. Only contiguous, unincorporated area can be included in the proposed boundaries. The LAFCO will convene a public hearing at which to consider the formation request. After hearing testimony, the LAFCO will either approve, modify or deny the proposal. If it is approved, the LAFCO will adopt terms and conditions for the formation and establish a sphere of influence for the CSD. Then, the LAFCO will direct the county board of supervisors to hold a hearing on the proposal.

If, at the hearing, the board of supervisors finds that 80% or more of the registered voters within the proposed district have signed the petition requesting formation, and no protests have been received, the supervisors may order the CSD formed without an election. The receipt of protests requires that the board consider whether an election should occur. An election cannot be waived when a proposed CSD crosses county lines. If an election is held and a majority of the qualified voters are in favor, the district will be formed. Upon formation, the supervisors will issue a resolution of formation establishing the boundaries of the district, its purpose(s), and its name.

Once a CSD is created, its boundaries may be altered and contiguous or noncontiguous unincorporated area added. In addition, incorporated territory located adjacent to the CSD may be annexed with the permission of the affected city. Annexation proceedings are initiated in accordance with the Cortese-Knox Act (Gov. Code section 56000 et seq.) and administered by the county LAFCO.

A CSD is governed by a three or five member board of directors elected from among the registered voters residing within the district boundaries. The number of directors is established in the resolution of formation approved by the board of supervisors. Alternatively, the board of supervisors or city council may constitute the directors of the CSD. Unlike CSAs, most CSDs are independent districts with their own board of directors (there were only nine dependent CSDs statewide in fiscal year 1986-87).

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Appendix

Text of Proposition 218

This initiative measure adds Articles XIII C and D to the California Constitution.

RIGHT TO VOTE ON TAXES ACT

SECTION 1. TITLE.

This act shall be known and may be cited as the "Right to Vote on Taxes Act."

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.

SECTION 3. VOTER APPROVAL FOR LOCAL TAX LEVIES.

Article XIII C is added to the California Constitution to read:

ARTICLE XIII C

SECTION 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.

(c) "Special district" means an agency of the state, formed pursuant to general law or a 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.

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

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.

(b) No local government may impose, extend, or increase any general tax unless and until that 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.

(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).

(d) No local government may impose, extend, or increase any special tax unless and until that 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, Sections 8 and 9 of Article II, 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.

SECTION 4. ASSESSMENT AND PROPERTY RELATED FEE REFORM.

Article XIII D is added to the California Constitution to read:

ARTICLE XIII D

SECTION 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 XIII C 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.

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

SEC. 2. Definitions.

As used in this article:

(a) "Agency" means any local government as defined in subdivision (b) of Section 1 of Article XIII C.

(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 a user fee or charge for a property related service.

(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.

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

(i) "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.

(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.

(2) Any special tax receiving a two-thirds vote pursuant to Section 4 of Article XIII A.

(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.

SEC. 4. Procedures and Requirements for All Assessments.

(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, the maintenance and operation expenses of a public improvement, or the cost of the property related service being provided. No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and an agency shall separate the general benefits from the special benefits conferred on a parcel. 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 those publicly owned parcels in fact receive no special benefit.

(b) All assessments shall be supported by a detailed engineers report prepared by a registered professional engineer certified by the State of California.

(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 owners particular parcel, the duration of the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, together with the date, time, and location of a public hearing on the proposed assessment. 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.

(d) Each notice mailed to owners of identified parcels within the district pursuant to subdivision (c) shall contain a ballot which includes the agencys address for receipt of the ballot once completed by any owner receiving the notice whereby the owner may indicate his or her name, reasonable identification of the parcel, and his or her 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.

(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.

(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 subdivision (e).

SEC. 5. Effective Date.

Pursuant to subdivision (a) of Section 10 of Article II, 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 approval process set forth in Section 4:

(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.

(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.

(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.

(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 those assessments shall be subject to the procedures and approval process set forth in Section 4.

SEC. 6. Property Related Fees and Charges.

(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.

(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.

(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:

(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.

(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.

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

(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. Reliance by an agency on any parcel map, including, but not limited to, an assessors parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an 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 that 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.

(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.

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.

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EXHIBIT 14

14

Understanding Proposition 218

Elizabeth G. Hill, Legislative Analyst ◆ December 1996

UNDERSTANDING PROPOSITION 218

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INTRODUCTION

Proposition 218 significantly changes local government finance. This constitutional initiative—approved by the state's voters in November 1996—applies to each of California's nearly 7,000 cities, counties, special districts, schools, community college districts, redevelopment agencies, and regional organizations.

The purpose of this guide is to help the Legislature, local officials, and other parties understand Proposition 218, including the actions local governments must take to implement it. The guide includes five chapters:

- How Proposition 218 Changes Local Finance and Governance.
- Understanding the Vocabulary of Proposition 218.
- Are Existing Revenues Affected by Proposition 218?
- What Must a Local Government do to Raise New Revenues?
- May Residents Overturn Local Taxes, Assessments, and Fees?

Finally, the appendix to this guide summarizes major areas of uncertainty pertaining to Proposition 218 (some of which the Legislature may wish to address), and includes the text of Proposition 218 (now Article XIII C and D of the California Constitution).

CHAPTER 1

How Proposition 218 Changes Local Finance and Governance

Nearly two decades ago, Proposition 13 sharply constrained local governments' ability to raise property taxes, the mainstay of local government finance. Proposition 13 also specified that any local tax imposed to pay for specific governmental programs—a "special tax"—must be approved by two-thirds of the voters.

Since that time, many local governments have relied increasingly upon *other* revenue tools to finance local services, most notably: assessments, property-related fees, and a variety of small general purpose taxes (such as hotel, business license, and utility user taxes). It is the use of *these* local revenue tools that is the focus of Proposition 218.

In general, the intent of Proposition 218 is to ensure that all taxes and most charges on property owners are subject to voter approval. In addition, Proposition 218 seeks to curb some perceived abuses in the use of assessments and property-related fees, specifically the use of these revenue-raising tools to pay for general governmental services rather than property-related services.

In this chapter, we provide an overview and perspective on the impact of Proposition 218 on local finance and governance.

PROPOSITION 218 CHANGES LOCAL GOVERNMENT FINANCE

Proposition 218 makes several important changes regarding local government finance. Figure 1 summarizes our observations regarding their fiscal impact.

Figure 1

Proposition 218's Impact on Local Finance

- The measure's fiscal impact cannot be fully ascertained until the uncertainty regarding some of its provisions are resolved.
- Most local revenues are not affected.
- The impact on certain local governments could be substantial.
- Local government revenue reductions will begin in 1997.
- In the long term, local government revenues are likely to be somewhat lower and come from different sources.

Some Uncertainty Regarding Proposition 218's Provisions

Proposition 218's requirements span a large spectrum, including local initiatives, water standby charges, legal standards of proof, election procedures, and the calculation and use of sewer assessment revenues. Although the measure is quite detailed in many respects, some important provisions are not completely clear.

In this guide, we provide our interpretation of the measure's requirements. This interpretation is based on our extensive review of the measure, as well as consultations with the measure's drafters, local government officials, and legal counsel. In some cases, however, we are not able to fully ascertain the meaning or scope of a Proposition 218 requirement. We believe our uncertainty—frequently shared by other analysts of the measure—will be resolved only when the Legislature enacts implementing statutes or court rulings become available.

Accordingly, throughout this guide we discuss Proposition 218 as we understand it. Where other parties have different opinions or the measure's requirements are not clear, we provide this information. Finally, we provide in Appendix I a summary of the areas in which clarifying legislative or judicial action may be necessary.

Most Local Revenues Are Not Affected

California local governments raise more than $50 billion annually from taxes, assessments, and fees. As Figure 2 shows, most of these local revenues are *not* affected directly by Proposition 218. Instead, Proposition 218's provisions apply to a relatively small subset of local government revenues.

Given the relatively small number and dollar value of local revenue sources that are affected by Proposition 218, we think it is highly unlikely that the measure could cause more than a 5 percent annual decrease in *aggregate* local government own-source revenues.

Figure 2

Which Local Revenues Are Affected by Proposition 218?

Affected	Not Directly Affected
Taxes	
New and some recently imposed "general" taxes.	Property taxes. Bradley-Burns sales taxes. Special taxes. Vehicle license taxes. Redevelopment revenues. Mello-Roos taxes. Timber taxes.
Assessments	
All new or increased assessments. Some existing assessments.	Most existing assessments.
Fees	
Property-related fees. (Fees imposed as an "incident of property ownership," not including gas, electric, or developer fees.)	Fees that are *not* property-related. Gas and electric fees. Developer fees.

Impact on Certain Local Governments May Be Substantial

The actual impact of Proposition 218 on local public services may be greater than our 5 percent estimate would suggest, however, for a variety of reasons. First, some governments are highly reliant upon the types of assessments and fees that would be restricted by this measure. These local governments—typically, small, newly incorporated cities, and library, fire, and park and recreation special districts—may sustain revenue reductions of much more than 5 percent. Some special districts also lack the authority to propose taxes to replace the lost assessment and fee revenues.

Second, many local governments have limited flexibility to reduce programs when revenues decline. Most major county programs, for example, are subject to state and federal mandates and spending requirements. As a result, relatively small revenue losses can trigger significant reductions to the few programs over which the local government has control.

Finally, many local governments will experience both revenue reductions *and* cost increases to comply with Proposition 218. For example, some local governments will lose part of their assessment and fee revenues, and have to pay:

- Assessments charges to other local governments.
- Increased election, property-owner notification, and administrative costs.

These increased costs will increase the fiscal impact of this measure on local government programs.

Fiscal Impact Begins in 1997

The fiscal impact of Proposition 218 will begin almost immediately. Within eight months of Proposition 218's passage, local governments will need to reduce or eliminate certain existing assessments and fees to meet the measure's requirements. (These

requirements are discussed in Chapter Three.) We estimate that these actions will reduce local government revenues by at least $100 million in 1997-98.

Proposition 218 also requires local governments to place before the voters certain existing assessments and taxes. Unless the voters ratify these assessments and taxes, local governments will experience *additional* revenues losses, potentially exceeding $100 million annually.

Longer Term: Different Revenue Sources, Probably Less Money

Proposition 218 restricts local governments' ability to impose assessments and property-related fees—and requires elections to approve many local government revenue raising methods. Because of this, it is likely that over the long term local governments will raise fewer revenues from assessments, property-related fees, and some taxes.

Unless these reduced local revenues are replaced with other revenues, local government spending for local public services will decrease accordingly. What other revenues could offset these revenue reductions? It is likely that local governments will pursue one or more of the following sources of potential replacement revenues:

- Redevelopment revenues.
- Developer exactions.

- General taxes imposed on particular groups (such as business license, hotel occupancy, and sporting or entertainment admission taxes).
- Special taxes imposed on properties within small, discrete areas.
- Intergovernmental transfers.
- Non-property related fees.

Limited Ability to Raise Replacement Revenues. Local governments' ability to expand these six other revenue sources is not great. Various legal and practical restrictions limit a major expansion of redevelopment or developer exactions, for example. In addition, many local government observers believe that existing hotel and business taxes are already high and not all parts of the state have major entertainment or sporting centers. (We include these taxes on the above list because these taxes are not paid directly by most voters. Thus, the likelihood of their being approved by a majority of voters may be higher than other general taxes.)

Similarly, while local governments in California have had difficulty securing the requisite two-thirds vote to impose special taxes, it is likely that some additional special taxes will be approved. Special taxes probably are more likely to be adopted in small, discrete areas of a community where the commonality of interest is high, however, rather than on a community-wide basis. Thus, the likelihood of generating significant revenues from special taxes is not great.

Additional major revenues from the state or federal government also do not appear likely, given the fiscal limitations faced by both these level of governments. (Please see our November 1996

publication, *California's Fiscal Outlook*, for our projections of the state's fiscal condition.)

This leaves the last revenue source on our list: non-property related fees. Ultimately, the ability of local government to expand this revenue source turns on how the term "property-related" fee is defined by the Legislature or courts. If the definition of a property-related fee is broad, then local government's ability to replace revenues lost by Proposition 218 is limited. Conversely, if this definition is narrow, then local government will have greater opportunities to replace lost revenues with expanded non property-related fees. (Even then, however, the state Constitution and statutes do not permit local government to charge fees in excess of costs.)

All in all, our review indicates that most local governments will have some ability to raise revenues to replace some of the funding lost by Proposition 218. This ability, however, is limited. Accordingly, we expect that in the long term, local governments will raise somewhat less revenues than they would have otherwise—and local government revenues will come from somewhat different sources. These revenue reductions will result in lower payments by people and businesses to government—and decreased spending for local public services.

Proposition 218 Changes Local Governance

In addition to changing local finance, Proposition 218 changes the governance roles and responsibilities of local residents and property owners, local government, and potentially, the state. While the full ramifications of these changes will not be known for years to come, some elements are already apparent.

Increased Role for Local Residents And Property Owners

Prior to Proposition 218, the local resident and property owner's role in approving most new local government revenue-raising measures was minimal. Local governments typically raised new funds by imposing new or increased assessments or fees, or in the case of charter cities, general-purpose taxes on utility use, business licences, and hotel occupancy. In most cases, California residents or property owners could object to these taxes or charges at a public hearing or during a statutory protest procedure, but these taxes or charges were not placed on the ballot. In short, locally elected governing bodies held most of the power over local revenue raising.

Proposition 218 shifts most of this power over taxation from locally elected governing boards to residents and property owners. In order to fulfill this considerable responsibility, local residents and property owners will need greater information on local government finances and responsibilities. Even with this information, however, the task of local residents and property owners will be difficult, given the frequently confusing manner in which program responsibilities are shared between state and local government, and among local governments.

Local Government Remains Responsible for Expenditures

Local government's powers, in contrast, become significantly constrained. While locally elected governing boards continue to be fully responsible for decision-making regarding the expenditure of public funds, they now have very little authority to raise funds without a vote of the residents or property owners. In addition, Proposition 218 limits local government's authority to call an election to raise revenues. Specifically, except in cases of emergency, local governments now may hold elections on general taxes only once every two years (consolidated with an election for members of the governing board.) Moreover, Proposition 218 limits the amount of an assessment or property-related fee that may be put before the property owners for a vote.

State Government Role May Expand

Proposition 218 may also alter the state's role and responsibilities regarding local government in several important ways. First, the Legislature will be asked to play a large role in interpreting Proposition 218's requirements, and helping set the rules regarding local government finance. In some cases, local governments are likely to ask for urgency legislation to enact these measures because the deadline for compliance with some Proposition 218 provisions is July 1, 1997.

Second, the Legislature will probably receive requests for fiscal assistance from local governments. These requests are likely to begin in the spring of 1997, as the fiscal consequences of the assessment and fee restrictions become apparent. Local governments are likely to turn to the state because it has more fiscal flexibility than local government. For example, the Legislature may raise taxes at any time with a two-thirds vote of its members.

Finally, any effort to restructure state-local program responsibilities is now more complicated. Specifically, the Legislature will have less flexibility to realign programs in a manner that increases local government responsibility without providing a direct subvention of state funds. This is because local governments have little or no flexibility to adjust their own revenues.

CHAPTER 2

Understanding the Vocabulary of Proposition 218

Any discussion of Proposition 218 requires an explanation of several local government finance words and terms. This chapter explains the vocabulary.

WHAT IS A TAX?

Taxes are government's most flexible revenue raising tool. A tax is a charge on an individual or business that pays for governmental services or facilities that benefit the public broadly. There need not be any direct relationship between how much tax a person pays and how much service he or she receives from government. Example of taxes include the property tax, sales tax, business licence tax, hotel occupancy tax, and utility users tax.

Special Tax Versus General Tax

A tax is called a "special" tax if its revenues are used for specific purposes and a "general" tax if its revenues may be used for any governmental purpose. This distinction is important because it determines whether a tax must be approved by a majority vote of the electorate (general tax)—or a two-thirds vote (special tax).

What Is an Assessment?

An assessment is a charge levied on property to pay for a public improvement or service that benefits property. Assessments are usually collected on the regular property tax bill. They are different, however, from the regular 1 percent property tax and property tax debt overrides in that assessment rates are not based on the value of the property. Assessments are also different from another charge that sometimes is placed on the property tax bill, parcel taxes. Unlike parcel taxes, assessments typically were not voter approved prior to Proposition 218. In addition, assessment rates were linked to the cost of providing a service or improvement, whereas parcel taxes could be set at any amount. Typical assessments include those for flood control improvements, streets, and lighting and landscaping.

What Is a Fee?

A fee is a charge imposed on an individual or business for a service or facility provided directly to an individual or business. Local governments charge fees for a wide range of purposes, from park entry fees to building plan check fees. The amount of the fee may not exceed the cost of government to provide the service.

A New Term: "Property-Related Fee"

Proposition 218 restricts property-related fees, defined as fees imposed "as an incident of property ownership." At this time, there is no consensus as to which fees meet this definition. The drafters of Proposition 218 indicate that it was their intent to include most

fees commonly collected on monthly bills to property owners, such as those for water delivery, garbage service, sewer service, and storm water management fees. Other analysts of Proposition 218 contend that fees that vary by level of service (for example, a fee for metered water usage) should not be considered a property-related fee, because it is based on service usage, rather than property ownership. Because Proposition 218 does not restrict nonproperty-related fees, the definition of this term will be an important and sensitive issue for the Legislature and courts.

Overlapping Terms

While the terms tax, assessment, and fee are each legally distinct, in practice they overlap. For example, communities in California may finance streets from taxes, assessments, and/or fees. In addition, local government officials sometimes call a charge one term, when it was legally adopted as another. As a result, the work of sorting out whether a particular charge must comply with Proposition 218's requirements for a tax, assessment, or fee will not always be easy.

CHAPTER 3

Are Existing Revenues Affected by Proposition 218?

Local governments must bring their existing taxes, assessments and property-related fees into conformity with Proposition 218. The deadline for each of these actions is:

- ♦ July 1, 1997—for assessment and property-related fees.
- ♦ November 6, 1998—for taxes.

Below, we discuss Proposition 218's requirements regarding *existing* taxes, assessments, and fees. (The requirements for *new* or *increased* revenue raising tools is the topic of the next chapter.) After each section, we answer some common questions regarding Proposition 218's requirements.

REQUIREMENTS FOR EXISTING TAXES

Proposition 218 does not affect existing special taxes or most general taxes. Proposition 218 affects only those *general* taxes that were imposed in 1995 or 1996 without a vote of the people.

In order to continue such a tax, Proposition 218 requires the governing body to place the tax before the voters by November 6, 1998. Unless the governing body unanimously votes to declare the election an emergency, the tax election must be consolidated

with a regularly scheduled election for members of the governing body. The local government may continue an existing tax if it is approved by a majority vote.

Questions

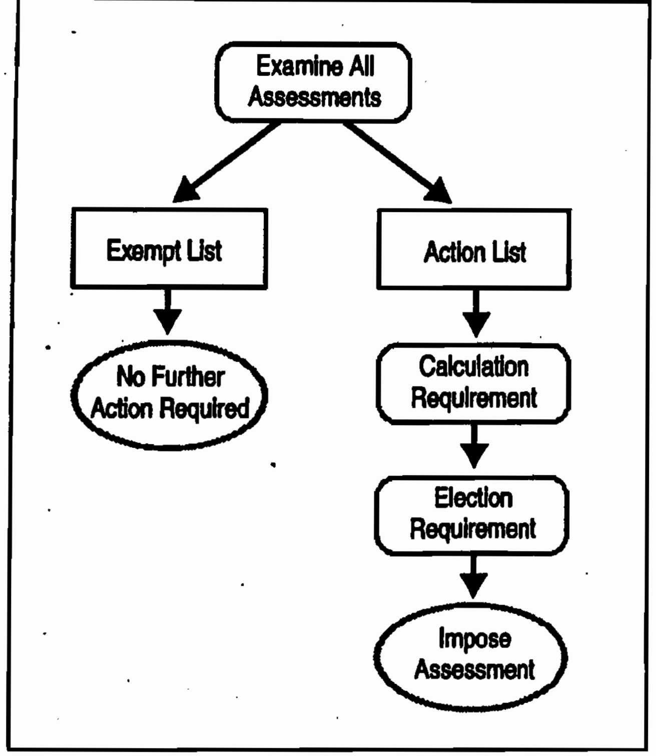
[illegible]

REQUIREMENTS FOR EXISTING ASSESSMENTS

Local governments must review all existing assessments, including standby-charges (which the measure defines as assessments). Figure 3 (see next page) shows the actions local governments must take to bring their existing assessments into compliance with Proposition 218.

Figure 3

Actions Required for Existing Assessments



The Examination Requirement: Many Assessments Will Qualify for Exempt List

Local government must examine each assessment to determine whether it meets one of the conditions for placement on the "exempt list." These conditions are:

- The assessment was previously approved by voters—or by all the property owners at the time the assessment was created.
- All of the assessment proceeds are pledged to bond repayment.
- All the assessment proceeds are used to pay for sidewalks, streets, sewers, water, flood control, drainage systems, or "vector control" (such as mosquito control).

Our review indicates that more than half of all existing assessments are likely to be exempt. Generally, this is because the assessment's funds are used for one of the approved purposes or are pledged to bond repayment—or the assessment was agreed to by a land developer, the sole property owner at the time the assessment was established.

If an assessment is not exempt, then the local government must eliminate the assessment or bring it into compliance with Proposition 218's assessment calculation and election requirements (described below). Our review indicates that the types of assessments that are not likely to satisfy any of the conditions for exemption are: fire, lighting and landscaping, and park and recreation assessments.

The Calculation Requirement: One of Proposition 218's Most Significant Changes

Local governments must recalculate all existing assessments that do not qualify for the exempt list. Our review indicates that in many cases, Proposition 218's provisions regarding the calculation of assessments will result in local governments lowering the amount they collect in assessments from property owners, or eliminating the assessment. We identify the specific calculation provisions below.

First: Determine If a Project or Service Provides Special Benefits. The local government must determine whether property owners would receive a "special benefit" from the project or service to be financed by the assessment. Proposition 218 defines a special benefit as a particular benefit to land and buildings, not a general benefit to the public or a general increase in property values. If a project or service would not provide such a special benefit, Proposition 218 states that it may not be financed by an assessment. Our review indicates that local governments will find it difficult to demonstrate that some existing assessments for ambulance, library, police, business improvement, and other services satisfy this tightened definition of special benefit. As a consequence, some existing assessments may need to be eliminated.

Second: Estimate the Amount of Special Benefit. Local government must use a professional engineer's report to estimate the *amount* of special benefit landowners would receive from the project or service, as well as the *amount* of "general benefit." This step is needed because Proposition 218 allows local government to recoup from assessments only the proportionate share of cost to provide the special benefit. That is, if special benefits represent 50 percent of total benefits, local government may use assessments to recoup half the project or service's costs. Local governments must use other revenues to pay for any remaining costs. This limitation on the use of assessments represents a major change from the law prior to Proposition 218, when local governments could

recoup from assessments the costs of providing both general and special benefits.

Third: Set Assessment Charges Proportionally. Finally, the local government must set individual assessment charges so that no property owner pays more than his or her proportional share of the total cost. This may require the local government to set assessment rates on a parcel-by-parcel basis. Properties owned by schools and other governmental agencies—previously exempt from some assessment charges—now must pay assessments.

Election Requirement: All Property-Owners Vote on Assessments

Local governments must mail information regarding assessments to all property owners. (Prior to Proposition 218, large communities could publish assessment information, rather than mail it to every property owner.) Each assessment notice must contain a mail-in ballot for the property owner to indicate his or her approval or disapproval of the assessment.

After mailing the notices, the local government must hold a public hearing. At the conclusion of the hearing, the local government must tabulate the ballots, weighing them in proportion to the amount of the assessment each property owner would pay. (For example, if homeowner Jones would pay twice as much assessment as homeowner Smith, homeowner Jones' vote would "count" twice as much as homeowner Smith's vote.) The assessment may be imposed only if 50 percent or more of the weighted ballots support the assessment.

Questions

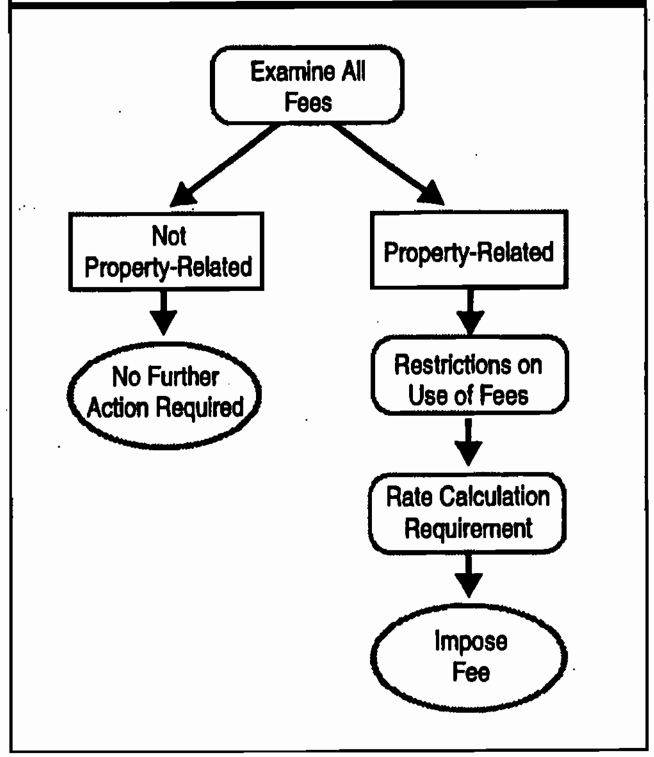
[illegible]

REQUIREMENTS FOR EXISTING FEES

As with assessments, local governments must complete a multi-step review of all fees. Figure 4 summarizes the process.

Figure 4

Actions Required for Existing Fees



Examination Requirement: Identifying Property-Related Fees

Local government must begin by examining all existing fees to determine whether they are "property-related" fees, imposed as an "incident of property ownership." (We discuss this term and the controversy surrounding it in Chapter Two). As Figure 4 shows, if a fee is *not* property-related, then the local government need not take any further action regarding the fee. Conversely, if the fee is property-related, then the local government must make sure that the fee complies with Proposition 218's restrictions on use of fee revenues and the rate calculation requirements. The deadline for these actions is July 1, 1997.

New Restrictions on Use of Fees

Proposition 218 specifies that no property-related fee may be:

- Levied to pay for a general governmental service, such as police or fire service.
- Imposed for a service not used by, or immediately available to, the property owner.
- Used to finance programs unrelated to the property-related service.

In order to comply with these restrictions, local governments will need to eliminate or reduce some existing fees. For example, some small cities currently charge property owners fees for ambulance or fire service. Proposition 218 does not permit governments to impose property-related fees for these purposes.

Similarly, some cities collect "franchise fees" or "in-lieu property taxes" from their water departments and deposit these revenues into their general funds. The cost of these franchise fees and taxes is passed onto local residents in terms of higher water fees. If water fees are considered property-related fees, then Proposition 218 would forbid this diversion of fee revenues. (Some local government observers believe that this diversion of fee revenues was impermissible *prior* to Proposition 218, as well.)

Possible Local Government Response to Fee Restrictions. In some cases, it may be possible for a local government to restructure a property-related fee so that it would no longer be considered a fee imposed "as an incident of property ownership." For example, a mandatory per parcel garbage collection fee may be considered a property-related fee, while an optional garbage collection service charge may not. Similarly, some local governments may be able to show that their franchise fee or in-lieu property tax represents their water department's reasonable share of central administrative expenses. If so, then Proposition 218 would not prohibit this transfer of revenues from the water department. Finally, some local governments may elect to privatize certain functions formally financed by property-related fees. Proposition 218 imposes no limit on private fees.

Fee Rate Calculation Requirement

After complying with Proposition 218's restrictions on the use of property-related fees, the local government must make sure that its property-related fees comply with the measure's calculation requirements. Specifically, local governments must make sure that no property owner's fee is greater than the proportionate cost to provide the property-related service to his or her parcel. Like assessments, this requirement may result in local governments setting property-related fee rates on a block-by-block, or parcel-by-parcel basis.

This fee rate calculation requirement—sometimes called the "proportionality" requirement—will make it difficult for local government to continue certain programs, such as those that offer reduced rates to low-income residents. This is because local governments typically finance these lower rates by charging higher rates to other property-owners. If these fees are considered property-related fees, the higher rates would not be permitted by Proposition 218. In order to continue these programs in the future, therefore, the local government would need to offset the cost of the program with other revenues, such as general tax revenues.

Question

[illegible]

CHAPTER 4

What Must a Local Government Do to Raise New Revenues?

In order to raise a new tax, assessment, or property-related fee, or to increase an existing one, local governments must comply with many of the same provisions discussed in the previous chapter. In general, these requirements are that local governments may use assessments and property-related fees only to finance projects and services that directly benefit property—and that most revenue-raising measures be approved in an election. Figure 5 (see next page) summarizes the vote required in these elections.

This chapter explains the steps local government must take to raise a new tax, assessment or property-related fee, or to increase an existing one.

REQUIREMENTS FOR NEW TAXES

In order to impose or increase a tax, local government must comply with the following provisions:

- All general taxes must be approved by a majority vote of the people. (A 1986 statutory initiative—Proposition 62—previously imposed this vote requirement

Figure 5

New or Increased Taxes, Assessment, and Fees What Vote Is Needed?

Type	Vote Needed	Who Votes	Vote Requirement
Taxes			
General	Yes	All voters in community or affected area.	Majority
Special	Yes	All voters in community or affected area.	Two-thirds
Assessments			
All	Yes	Property owners (and renters responsible for paying assessments) in affected area.	Majority, weighted in proportion to assessment liability.
Fees			
General, not property related	No	N/A	N/A
Property related	Yes, for any service other than water, sewer, or refuse collection.	Local government may choose: • Property owners (and renters responsible for paying fee) in affected area, or • Electorate in the affected area.	Majority of property owners or two-thirds of electorate. Local governments *may* weight ballots in proportion to fee liability.

on *general law* cities and counties. Proposition 218 expands this requirement to include *charter* cities, such as Los Angeles, Oakland, and San Francisco.)

- Elections for general taxes must be consolidated with a regularly scheduled election for members of the local governing body. (In an emergency, this provision may be waived by a unanimous vote of the governing body.)
- Any tax imposed for a specific purpose is a "special tax," *even if its funds are placed into the community's general fund.* (Prior to Proposition 218, all taxes placed into a community's general fund were commonly considered general taxes, requiring only a majority vote.)

Requirements for New Assessments

All new or increased assessments must follow the assessment calculation and election requirements discussed in the previous chapter. There are no exceptions to this requirement.

As a practical matter, this requirement will mean that programs that benefit people, rather than specific properties—such as libraries, mosquito abatement, recreation programs, police protection, and some business improvement programs—must be financed by general or special taxes or by other nonassessment revenues.

Questions

[illegible]

REQUIREMENTS FOR NEW FEES

To impose a new or increased property-related fee, local government must comply with the fee restriction and fee rate calculation requirements discussed in the last chapter.

Local governments must also:

- Mail information regarding the proposed fee to every property owner.
- Hold a hearing at least 45 days after the mailing.

- Reject the proposed fee if written protests are presented by a majority of the affected property owners.
- Hold an election on any property-related fee, other than a fee for water, sewer, or refuse collection. (Figure 5 shows the vote required in these elections.)

As a practical matter, local governments will find it much more difficult—and expensive—to impose or increase property-related fees. In some cases, local governments are probably more likely to try to raise revenues through non property-related fees or taxes.

Question

[illegible]

CHAPTER 5

May Residents Overturn Local Taxes, Assessments, and Fees?

Proposition 218 expands California residents' power to challenge local revenue raising measures.

GREATER INITIATIVE POWERS

Prior to Proposition 218, the extent to which local residents could use an initiative to challenge local government revenue raising methods was not certain. In a 1995 case, *Rossi v. Brown*, the California Supreme Court ruled that people had the power to use the initiative to repeal a minor tax. There have been no court rulings, however, addressing the question of whether an initiative may be used to repeal a more substantial revenue source.

Proposition 218 eliminates any ambiguity regarding the power of local residents to use the initiative by stating that residents of California shall have the power to repeal or reduce *any* local tax, assessment, or fee. In addition, the measure forbids the Legislature and local governments from imposing a signature requirement for local initiatives that is higher than that applicable to statewide statutory initiatives. As a consequence of these provisions, the only limits on local residents' ability to overturn local revenue raising

measures appear to be those in the federal constitution, such as the federal debt impairment clause.

Question

[illegible]

SHIFT OF BURDEN OF PROOF

Prior to Proposition 218's passage, the courts allowed local governments significant flexibility in determining fee and assessment amounts. A business or resident challenging the validity of a fee or assessment carried the "burden of proof" to show the court that the fee or assessment was illegal. Proposition 218 changed this legal standard by shifting the burden of proof to local governments. Now local governments must prove that any disputed fee or assessment charge is legal.

APPENDIX I

Areas in Which Legislative or Judicial Clarification May Be Needed

As we discuss throughout this guide, while Proposition 218 is quite detailed in many respects, some important provisions are not completely clear. This appendix summarizes the major questions regarding Proposition 218 that must be resolved so that local governments can begin implementation.

Because Proposition 218 sets a July 1, 1997 deadline for local governments to bring existing fees and assessments into conformity with the measure's requirements, legislative or judicial clarification on questions related to assessments and fees is needed as soon as possible.

PROPERTY-RELATED FEES

- What is included in the definition of a property-related fee?
- Are water charges that are based on metered use of water property-related fees?
- Are regulatory fees, such as rent control administrative fees, property-related fees?
- Are lease payments and other such charges on government-owned assets property-related fees?

- How precisely must local government allocate shares of costs for a property-related service? Can local government set general fee rate categories, or must local government determine the actual cost of service to every parcel?

ASSESSMENTS

- What is a "special benefit" and how can it be distinguished from a "general benefit?"
- Existing assessments used exclusively for sidewalks, streets, sewers, water, flood control, drainage systems, and vector control are exempt from the measure's calculation and election requirements. How broadly should these exemptions be interpreted?
- How precisely must local government allocate shares of costs for an assessment? Can local government set general assessment rate categories, or must local government determine the actual cost of service to every parcel?
- If an existing assessment is increased by a formula that was set forth at the time the existing assessment was imposed, must the assessment comply with the measure's calculation and election requirements? Similarly, need the measure go through these processes again if a *future* assessment is increased by a formula set forth at the time the new assessment was imposed?
- How should the existing statutory assessment approval process be reconciled with Proposition 218's assessment approval process?

- Some assessments are annually re-imposed by local government. Must a local government annually repeat the calculation and election procedures required by Proposition 218?
- If an assessment that is annually re-imposed by local government is currently eligible for the exempt list, must it comply with Proposition 218's calculation and election procedures when it is re-imposed next year?

ELECTIONS

- What procedures should govern the assessment and fee elections?
- Who may vote on referendums to repeal assessments, fees, or taxes?
- How will a local government determine whether a renter is eligible to vote?
- Who gets to vote when a parcel is owned by multiple parties, or by a governmental entity?

TAXES

- Are Mello-Roos taxes affected in any way? Similarly, how should assessments imposed under Mello-Roos law be treated?
- Is the measure's requirement that certain existing taxes be ratified by the voters an unconstitutional referendum on taxes?

DEBT

- Could a local initiative jeopardize a revenue stream pledged to the payment of existing (or future) debt?

APPENDIX II

Text of Proposition 218

This initiative measure adds Articles XIII C and D to the California Constitution.

RIGHT TO VOTE ON TAXES ACT

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

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.

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

ARTICLE XIII C

SECTION 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.

(c) "Special district" means an agency of the state, formed pursuant to general law or a 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.

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

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.

(b) No local government may impose, extend, or increase any general tax unless and until that 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.

(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).

(d) No local government may impose, extend, or increase any special tax unless and until that 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, Sections 8 and 9 of Article II, 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.*

SECTION 4. ASSESSMENT AND PROPERTY RELATED FEE REFORM.

Article XIII D is added to the California Constitution to read:

ARTICLE XIII D

SECTION 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 XIII C 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.

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

SEC. 2. Definitions. As used in this article:

(a) "Agency" means any local government as defined in subdivision (b) of Section 1 of Article XIII C.

(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 a user fee or charge for a property related service.

(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.

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

(i) "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. (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.

(2) Any special tax receiving a two-thirds vote pursuant to Section 4 of Article XIII A.

(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.

SEC. 4. Procedures and Requirements for All Assessments. (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, the maintenance and operation expenses of a public improvement, or the cost of the property related service being provided. No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, *and an agency shall separate the general benefits from the special benefits conferred on a parcel. 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 those publicly owned parcels in fact receive no special benefit.*

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

(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 the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, together with the date, time, and location of a public hearing on the proposed assessment. 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.

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

(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.

(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 subdivision (e).

SEC. 5. Effective Date. Pursuant to subdivision (a) of Section 10 of Article II, 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 approval process set forth in Section 4:

(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.

(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.

(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.

(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 those assessments shall be subject to the procedures and approval process set forth in Section 4.

SEC. 6. Property Related Fees and Charges. (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.

(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.

(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:

(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.

(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.

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

(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. 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 an 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 that 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.

(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.

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.

EXHIBIT 15

Living With Proposition 218

A Handbook for City Officials

November 20, 1996
Hyatt Regency, Sacramento

Panelists
Tom Mauk, City Manager, Whittier
Tony Bernhard, County Clerk Recorder, Yolo County
Steve Casaleggio, Bond Counsel, Jones, Hall, Hill & White
Michael Coleman, Senior Management Analyst, Sacramento
Wynn Furth, City Attorney, Claremont (Best, Best & Krieger)
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Legislative Analyst's Office

TABLE OF CONTENTS

On November 5, 1996, the voters of the State of California voted 56.5% to 43.5% to amend the Proposition 218, "*The Right to Vote on Taxes Act*," into the State Constitution. Proposition 218 will have significant and far reaching consequences for local governments in California. The pages that follow provide some of the leading advice available today for local officials trying to implement the will of the voters in the best interests of their constituents. In some places, the comments illustrate ambiguous and controversial sections of the law that will only be resolved through the judicial rulings or legislative action. Thus, the words on these pages are time sensitive, and our understanding of Proposition 218 will evolve over the years to come.

Michael Coleman, Editor
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PROPOSITION 218
BALLOT TITLE AND SUMMARY

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-third must approve (a) 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 the 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.

Taxes

1. Has your agency adopted, extended or increased a tax since January 1, 1995 without voter approval?

   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 the 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. Article XIIIC §.(2)(c)

2. If so . . .

   a. You must put the tax on the ballot for voter approval, election to be held by November 6, 1998. [Article XIIID §2(c)]

   b. Tax election for *General Taxes* must be at a regular election at which members of the agency governing board are elected

      - except in case of emergency declared by a unanimous vote of the governing board (of those present).

> The Fox Initiative [Prop.218] does not contain a similar restriction on elections to approve special taxes. Thus, for example, the provisions for elections, including landowner elections, to approve special taxes in a community facilities district ("Mello- Roos District") appear to be unaffected by the tax election provisions of the Fox Initiative [Prop. 218].
>
> - Daniel Hentschke, Craig Labadie & Natalie West
> "An Analysis of Proposition 218: The Fox Initiative"
> *Western City*, August 1996

NOTES:

c. 2/3 voter approval is required for . . .

i. Any tax imposed for a specific purpose, *even if it is put in the General Fund*

> At present, any tax that goes into the general fund without legal restrictions is a general tax. Under the initiative, a tax "imposed" for a special purpose is a special tax even if it is unrestricted. This may mean that if a council tells the public that new funds are needed to, for example, maintain public safety services, the tax may be a "special tax." This would reduce the power of a majority of voters to pass taxes.
>
> - Wynne S. Furth
> Best, Best & Krieger, LLP

> What is meant by the phrase taxes "imposed for specific purposes, including taxes imposed for specific purposes which are placed into a general fund"? Can cities and counties retain the simple majority voter approval standard for a general tax by making the tax revenues legally -- as opposed to politically -- unrestricted in their use?
>
> . . .
>
> Attorneys for the HJTA assert that Sec.l(d) of this initiative is intended to codify the rule of *Rider v. County of San Diego* that a single purpose agency may not impose a general tax, but must obtain two-thirds voter approval for any tax. However, the provision could be read more broadly to limit the ability of local governments to tie proposed general taxes to specific public concerns such as law enforcement, parks, libraries, etc.
>
> - Michael G. Colantuono
> Richards, Watson, & Gershon

> Special taxes are levied for a specific purpose. . . . Proposition 218 simply restates existing law.
>
> - The Myths About Proposition 218
> Howard Jarvis Taxpayers Association

NOTES:

ii. Any tax imposed on any parcel of property

> Proposition 218 may redefine general parcel taxes in such a way that two-thirds vote will now be required.
>
> - Wynne S. Furth
> Best, Best & Krieger, LLP

3. Key Dates

January 1, 1995	Charter City General Tax Window Opens Prop. 218 requires non-voter approved general taxes adopted after January 1, 1995 to be presented for voter ratification by November 6, 1998 at an election in which City Council or Board of Supervisors seats are contested.
November 6, 1998	Deadline to Validate "Window-Period" Taxes General taxes adopted without a vote of the people between January 1, 1995 and November 6, 1996 must be validated at the polls by November 6, 1998.

4. Important Considerations

a. Special Purpose Districts (including schools) have no power to levy general taxes . . . but what about multi-purpose special districts?

> Special purpose districts or agencies, including school districts, shall have no power to levy general taxes.
> Article XIII, §.2(a)

> Can special districts propose general taxes? Prop. 218 provides that single-purpose special districts may only propose special taxes. It does not appear to limit multipurpose special districts, such as dependent Community Services Districts . . . .
>
> - Michael G. Colantuono
> Richards, Watson, & Gershon

NOTES:

b. Including Future Increases or Escalators in the Ballot Measure

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 than <*sic*> the government wants to levy now but could raise to the voter approved level at some later time.

- Jonathan M. Coupal
Howard Jarvis Taxpayers Association
Annotated version of Proposition 218 in
9/16/96 letter to Gene Rogers, City Manager, City of Moreno Valley

A tax measure may establish a maximum tax rate and would exempt from the requirement for voter approval of tax increases any levy that was within the previously authorized maximum tax rate.

- Daniel Hentschke, Craig Labadie & Natalie West
"An Analysis of Proposition 218: The Fox Initiative"
Western City, August 1996

c. Backdating and *Guardino*

If adopted, this section might obviate the need to determine whether or not *Guardino* retroactively invalidates taxes imposed between January 1, 1995 and December 14, 1995, limiting the retroactivity issue to taxes adopted between November 1986 and the end of 1994. It authorizes the collection of such taxes if approved by the voters within two years' time, and may impliedly authorize the collection of those taxes until the tax is defeated at the polls. It also "backdates" the initiative's effective date to January 1, 1995, although that aspect of the measure may be subject to challenge under the rationale of the decisions which invalidated the similar provision of Proposition 62. In addition, retroactive application of the initiative will likely be held inapplicable where it would violate the Contracts Clause of the federal constitution, as by impairing revenues pledged for the payment of bonds.

- Michael G. Colantuono
Richards, Watson, & Gershon

NOTES:

Property-Related Fees

> 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.
>
> - Jonathan M. Coupal
> Howard Jarvis Taxpayers Association
> Annotated version of Proposition 218

1. What is a "Property-Related Fee"

"'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." [SECTION 4 § 2 (e)]

> 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.
>
> - Jonathan M. Coupal
> Howard Jarvis Taxpayers Association
> Annotated version of Proposition 218

"'Property-related service' means a public service having a direct relationship to property ownership." [Article XIIID §2(h)]

"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 as incident of property ownership for purposes of this Article" [Article XIIID §4(b)]

NOTES:

Fees for water, sewer, and refuse collection service probably meet the measure's definition of a property-related fee.

- Legislative Analyst's Office

The HJTA states that this provision is intended to prevent a local government from avoiding the rules of the measure by recharacterizing a tax or an assessment as a fee or a charge. Therefore, it applies only to a small class of fees.

It should be noted that the HJTA contends, with only limited support in the text of the measure, that the measure applies to all utility fees, whether or not those charges are imposed on property or a property owner without regard to utility consumption. If that construction prevails, cities and counties may indeed have a strong incentive to privatize water and other utility systems.

. . . .

Moreover, that interpretation leads to absurd policy results, such as an election on whether to pay increased water costs imposed by a wholesaler, such as the California Water Project.

- Michael G. Colantuono
Richards, Watson, & Gershon

To give effect to the entire definition, it would appear necessary to include *only* those fees which are imposed on the property or property owner merely by virtue of property ownership and not as a result of requesting service or of the level of use of the service.

Water Rates. Not included because they are dependent upon use not property ownership. A property owner can avoid paying water rates by not using the water.

Meter Charges. Not included because not imposed as an incident of property ownership. but instead as an incident of a request for a meter and the size of the meter requested. A property owner not requesting water service can avoid the charge.

Sewer Fees. If the fee is a flat rate per parcel whether or not connected to the system, then It would be subject to Article XIIID (Note: Service must be 'immediately available per Section 6(b)(5)).If the charge varied with some measure of use, such as water use, then sewer fees may be excluded, because the amount of the charge on a particular parcel cannot he calculated without reference to the owner's use.

(Continued next page)

NOTES:

<u>Connection Fees and Capacity Charges and Other Fees Imposed at the Time Service Is Requested</u>. The imposition of the fee generally depends upon the request for extension of service, not on property ownership, therefore, probably not subject to Article XIIID.

<u>Readiness-to-Serve Charges, New Demand Charges Connection Maintenance Charges, Retail Meter Charges</u>. Charges imposed by an agency on another public agency are not included because they are not imposed upon a parcel or property owner.

<u>Conservation Charges and Penalties Imposed Upon Excessive Use</u>. Imposed as an incident of use, not on the basis of property ownership, therefore probably not included.

<u>Charges Which Become Liens on Real Property Because They Are Delinquent</u>. The provisions allowing agencies to impose a lien on real property, if delinquent, are merely a collection device and would not convert the original charge into a fee imposed as an incident of property ownership.

Any fee or charge imposed on the basis of acreage, frontage, or per panel, and imposed whether or not the service is requested or used, would be subject to Article XIIID, including trash collection fees, library, parks, street lighting, landscape maintenance, etc.

. . .

Possible Determining Criteria. Is the fee or charge imposed on all identified parcels, whether or not a request for service is made and regardless of the level or amount of service used?

- Janet R. Morningstar
McCormick Kidman & Behrens, LLP
10/16/96 Memo to ACWA Committee on Proposition 218

2. Some Fees Are Not Property-Related Fees

[*Referring to Article XIIID, §.(2)(e)*] While there is some uncertainty whether this definition includes fees for utility services, we conclude that this definition does not include non-property-related services fees, rental fees, and regulatory fees.

- Michael G. Colantuono
Richards, Watson, & Gershon

NOTES:

a. Development impact fees are not "property-related fees"[Article XIIID§1(b)]

> The purpose of this section is to leave unaffected any existing law relating to developer fees.
>
> - Jonathan M. Coupal
> Howard Jarvis Taxpayers Association
> Annotated version of Proposition 218

> This probably includes both review fees, like building permit fees, and zone change application fees, and capital improvement fees charged to new construction to pay for capital improvements like park fees.
>
> - Wynne S. Furth
> Best, Best & Krieger, LLP

b. Fees for electrical or gas service are not "property-related fees" [Article XIIID §3(b)]

> Such services, even when provided by a public utility, are usually metered and, therefore, probably meet the "cost of service" requirements of this initiative. Therefore they were exempted from application.
>
> - Jonathan M. Coupal
> Howard Jarvis Taxpayers Association
> Annotated version of Proposition 218

3. Requirements For All Existing, New or Increased Property-Related Fees

> 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."
>
> - Jonathan M. Coupal
> Howard Jarvis Taxpayers Association
> Annotated version of Proposition 218

a. Revenues from a fee may not exceed the funds required to provide the

NOTES:

service. (Article XIIID §.6(b)(1))

b. Revenues from the fee may not be used for any purpose other than that for which the fee was imposed. (Article XIIID §6(b)(2))

> Proposition 218 will . . . (stop) the current practice of many public agencies from overcharging ratepayers through excessive utility bills and transferring the "surplus" to the general fund to be spent at the discretion of local politicians. Proposition 218 will stop this "hidden tax" that is imposed without voter approval.
>
> - The Myths About Proposition 218
> Howard Jarvis Taxpayers Association

c. The fee must not exceed the proportional cost of the service to the parcel. (Article XIIID §6(b)(3))

> 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.
>
> - Legislative Analyst's Office

> "Lifeline" rates for elderly and disabled for telephone, gas, and electric services are NOT affected.
>
> - Rebuttal to Argument Against
> Proposition 218 in Ballot Pamphlet
>
> Proposition 218 does not preclude local governments from using existing tax dollars to finance "lifeline" programs, just like taxpayer funds are used to finance other programs that benefit people in need. However, if local officials want to increase taxpayer utility bills to finance these programs, voter approval will be necessary.
>
> - The Myths About Proposition 218
> Howard Jarvis Taxpayers Association

NOTES:

d. The service must be actually used by, or immediately available to the fee payer. Charges for future services or standby charges must be classified as assessments. (Article XIIID §6(b)(4))

> Standby Charges Specifically identified as assessments, subject to the procedures for adopting assessments under Section 4.
>
> Capital Facilities Fees Fees for future facilities cannot be imposed as a property-related fee (Section 6(b)(4)), therefore, must be adopted as an assessment.
>
> - Janet R. Morningstar
> McCormick Kidman & Behrens, LLP
> 10/16/96 Memo to ACWA Committee on Proposition 218

> Standby charges must be adopted and implemented as assessments under the rules noted . . . , but would also qualify for the exemptions for certain existing "assessments."
>
> - Michael G. Colantuono
> Richards, Watson, & Gershon

> Classifying standby charges as assessments is consistent with current law, at least when the charge is to fund capital improvements.
>
> In the absence of any legal authorities interpreting the proposed Article XIIID, we conclude that an existing standby charge may continue to be levied at its current rate and by the current methodology. This assumes that the charge is imposed exclusively to finance the capital costs or maintenance and operating expenses for a water system.
>
> - Daniel Hentschke
> Brown, Diven & Hentschke
> 10/18/96 Memo to Vincent F. Biondo, Jr.

2

e. A property-related fee may not be charged for general government services where the service is available to the public at large in the same manner as it is to property owners (e.g., police, fire, ambulance or library services, etc.) (Article XIIID §6(b)(5))

NOTES:

4. *Existing* property-related fees require *no action* as long as . . .

   i. they meet the requirements above, and

   ii. the rates are not changed.

5. To adopt new - or increase old - *property-related* fees an agency must . . . [Article XIIID § 6 (a)]

   a. Identify each parcel to be charged and calculate the amount to be charged each parcel.

   The parcels upon which a fee or charge is imposed for imposition shall be identified. The amount of fee or charge imposed upon each parcel shall be calculated. Article XIIID §6(a)(1)

   > This requirement would seem to eliminate fees which are only imposed in connection with a request for extension of service like connection fees, capacity charges, meter installation fees and fees dependent upon the level of service or amount of use, such as - monthly meter charges and water rates because the parcels and amount of the fee depend upon use of the service by the owner, not mere property ownership.
   >
   > - Janet R. Morningstar
   > McCormick Kidman & Behrens, LLP
   > 10/16/96 Memo to ACWA Committee on Proposition 218

   b. Give detailed written mailed notice to record owner of each parcel upon which the fee is proposed for imposition.

   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

NOTES:

the fee or charge, together with the date, time and location of a public hearing on the proposed fee or charge. Article XIIID §6(a)(1)

c. Conduct a public hearing not less than 45 days after mailing the notice

d. Not impose the fee if a majority protest is received

If the 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. Article XIIID§6(a)(2)]

> [This section:]
>
> - Allows vocal minority to overrule silent majority.
> - Provides for majority protest calculation which is inconsistent with the existing majority protest calculation of various assessment acts (e.g. majority of area (1972 Act), majority of registered voters (1982 Act)).
> - Bars override of majority protest by a supermajority of the legislative body for health and safety reasons, as is commonly permitted under existing law.
>
> \- Michael G. Colantuono
> Richards, Watson, & Gershon

e. Seek and receive voter approval at an election not less than 45 days after the public hearing - *except for fees or charges for sewer, water, and refuse collection services*. [Article XIIID§6(b)]

i. Majority vote of the property owners subject to the fee, <u>or</u>

ii. 2/3 vote of the electorate residing in the affected area.

NOTES:

What fees are included in "water, sewer, and garbage collection"? An example...

> Since all services provided by an agricultural water entity are related to making water immediately available for agricultural irrigation, I would argue in appropriate circumstances that conservation and groundwater recharge programs provide a present property-related benefit. Conservation programs make more water available and may secure water rights against Article X, Section 2 challenge. Groundwater recharge programs may be necessary in appropriate circumstances where conjunctive use operations are desirable to manage water levels within the service area. In those situations groundwater recharge is probably necessary to limit subsidence, which can have substantial adverse impact on the agency's water delivery systems. Consequently, expenses incurred from the provision of these services may be satisfied from a category of water rate or charge.
>
> - Michael Sexton
> Minasian, Minasian, Minasian,
> Spruance, Baber, Meith & Soares LLP

6. Alternatives for Problem Fees

   a. Change fee to a non-property-related fee (imposed not as an "incident of property ownership") making it outside the scope of Proposition 218.

   b. Change the fee to a NON-PROPERTY TAX FOR GENERAL PURPOSES and follow the requirements for general taxes.

   c. Change the fee to a PARCEL TAX or NON-PROPERTY TAX FOR SPECIAL PURPOSES and follow the requirements for special taxes.

7. Key Date

Beginning July 1, 1997, all fees or charges shall comply with this section. Article XIIID §6(d)

NOTES:

8. Tenants as Property Owners.

"'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." [Article XIIID § 2 (g)]

> Under this definition, if the tenant of real property is directly liable to pay an assessment, they would have the right to protest the vote. This will depend on the terms of the lease. "Direct pass throughs" are more common in commercial leases as opposed to residential leases.
>
> - Jonathan M. Coupal
> Howard Jarvis Taxpayers Association
> Annotated version of Proposition 218 in
> 9/16/96 letter to Gene Rogers, City Manager, City of Moreno Valley

> Will protest rights for fees (and assessments) be afforded to some tenants as the definition of "property ownership" in Article XIIID§2(g) suggests, or are notices to be mailed only to record owners of property, as §6(a)(1) and §4© state? Here the text belies the apparent intent of the measure. What is meant by the requirement that tenant-voters "be directly liable to pay the assessment, fee or charge in question"? Clarifying legislation, as well as a reasonably administrable way to identify qualified tenants and to prevent double-voting by their landlords, will be necessary.
>
> - Michael G. Colantuono
> Richards, Watson, & Gershon

NOTES:

Assessments

1. What is an Assessment?

"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."
Article XIIID, § 2 (b)

2. Exemptions for Assessment Districts Existing on the Effective Date of Prop 218 (November 6, 1996)

   a. The assessment is used exclusively for the acquisition, installation, construction, reconstruction, or replacement, maintenance and operations expenses for sidewalks, streets, sewers, water, flood control, drainage systems or vector control.

   > However, "maintenance and operations expenses" are limited to maintenance and operations of a permanent capital improvement. If your fire district assessment pays for fire inspectors, that wouldn't seem to qualify.
   > - Wynne S. Furth
   > Best, Best & Krieger, LLP

   b. The assessment was approved by the persons owning all of the parcels at the time the assessment was initially imposed.

   > 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.
   > - Jonathan M. Coupal
   > Howard Jarvis Taxpayers Association
   > Annotated version of Proposition 218

NOTES:

c. Used exclusively to repay bonded indebtedness where failure to pay such indebtedness would violate the Contract Impairment Clause of the United States Constitution.

> Even an amendment to the California Constitution cannot impair a contract protected by the federal constitution. However, this exception can only be used for bonds that are actually protected by the impairment clause. Certificates of Participation and other creative debt instruments would not be protected.
>
> - Jonathan M. Coupal
> Howard Jarvis Taxpayers Association
> Annotated version of Proposition 218

d. Previously received approval by a majority of voters at an election called for such a purpose.

\>> *Any subsequent increase is subject to the procedures and approval process for assessments in Article XIIID Section 4.*

3. Procedures and Approval Process for Assessments *(Article XIIID Section 4)*

a. Assessments must be calculated so as not to exceed the special benefit to the parcel.

i. Local agencies must distinguish between general and special benefit and only assess for the "reasonable cost of the proportional special benefit received by the parcel." Article XIIID,§4(a)

> This provision would require local governments to examine assessment amounts in detail, potentially setting them on a parcel by parcel basis.
>
> - Legislative Analyst's Office

NOTES:

ii. The allocation of costs must be supported by a report of a licensed professional engineer.

iii. The burden of proof is on the local agency

> Does the definition of fire services as a "general governmental service" in Article XIIID,§ 6(b)(5) apply to the ban on assessments for the portion of services attributable to "general benefit" stated in Article XIIID,§ 4(a)? Or, are fire services a "general government service" under the fee section, but a "special benefit to property" under the assessment sections? Joel Fox of the Howard Jarvis Taxpayers Association (HJTA), the proponent of the initiative, argued during the campaign that fire services do provide special benefit to property, but the text of the measure suggests otherwise.
>
> - Michael G. Colantuono
> Richards, Watson, & Gershon

> Nothing in Proposition 218 expressly prohibits fire suppression assessments. If a fire suppression assessment district can be shown to provide special benefits to property within close proximity of a fire facility, then it may in fact meet the requirements of the act.
>
> -" The Myths About Proposition 218"
> Howard Jarvis Taxpayers Association

b. Public property may not be excluded from an assessment district.

i. Federal, state, county, regional, schools, special districts, city, etc.

ii. A publicly-owned parcel may only be excluded if it can be shown by "clear and convincing evidence" that it would receive no special benefit.

NOTES:

Although this provision will abrogate the state-law doctrine of intergovernmental immunity, federal agencies can be assessed only if they have entered into leases which obligate them to pay assessments imposed on their landlords or if another exception to the federal immunity doctrine applies. In addition, some existing statutes require an agency which imposes an assessment on another government agency to pay the assessment itself.

Agencies which are obliged to pay assessments imposed by other agencies will have the right to vote on the imposition of the assessment.

- Michael G. Colantuono
Richards, Watson, & Gershon

c. Noticing and approval procedure

i. Prior to levying any assessment, a notice and a ballot must be mailed to all property owners. (Article XIIID,§4(d))

ii. At the public hearing, if more returned ballots (weighted by the amount of assessment each owner would pay) are against than in favor, the assessment cannot be levied. Non-voters count on neither side. (Article XIIID,§4(e))

NOTES:

d. Do "annual assessments" have to be approved annually?

> 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 remain 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 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 a result of land use changes would not trigger applicability of Section 4. However, the procedure 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.
>
> - Jonathan M. Coupal
> Howard Jarvis Taxpayers Association
> Annotated version of Proposition 218

4. Alternatives

a. Do Nothing

> It can be argued that existing assessments can remain in place as long as the amounts are not changed.
>
> - Natalie E. West
> McDonough, Holland and Allen

b. Get Majority Voter Approval before July 1, 1997. (Natalie E. West; McDonough, Holland and Allen)

c. Change the assessment to a NON-PROPERTY TAX FOR GENERAL PURPOSES and follow the requirements for general taxes. (*Check with you local elections official to be sure the database and calendar make this practical*)

d. Change the assessment to a PARCEL TAX and follow the requirements for special taxes. (*Check with you local elections official to be sure the database and calendar make this practical*)

NOTES:

Other Issues

1. Initiative/Referendum Powers

...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. Article XIIIC §3

> To some extent, this provision constitutionalizes the recent decision of the Supreme Court in *Rossi v.* Brown, which upheld a San Francisco initiative that repealed a tax. It goes further than that, however, as it purports to extend the initiative power to assessments, fees, and charges, which had previously been considered administrative rather than legislative matters, and therefore beyond the initiative power. In addition, it will prevent charter cities from avoiding the *Rossi* rule by charter amendment.
>
> \- Michael G. Colantuono
> Richards, Watson, & Gershon

> It is unclear whether the proposed right to initiative extends only to taxes, assessments, and fees that are "property-related" and apply throughout the territory of the agency, or whether it also applies to fees for service or charges and assessments for local improvements within discrete benefit or service areas.
>
> \- Daniel Hentschke, Craig Labadie & Natalie West
> "An Analysis of Proposition 218: The Fox Initiative"
> *Western City*, August 1996

Effect on Debt Issuance and Credit Risk

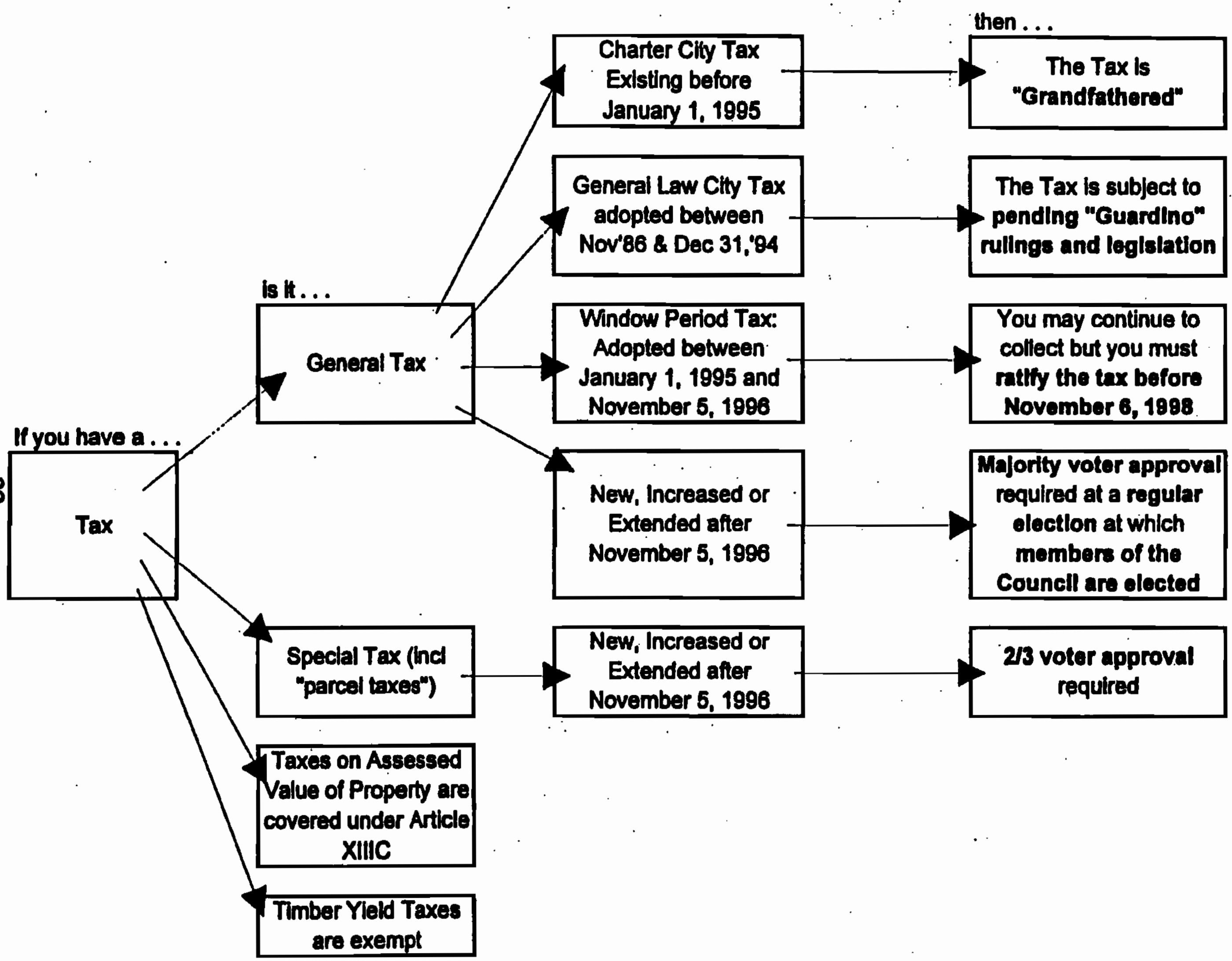
> Will the initiative and referendum powers as to taxes, fees, and assessments created by Prop. 218 impair the ability of local governments to sell bonds and access the credit markets? The text of Prop. 218 suggests that the initiative power can be used to revoke a revenue source after that source has been pledged to repay a debt created after the adoption of Prop. 218. The sponsors of Prop. 218 say that was not their intent and cite a press release issued during the campaign by State Treasurer Matt Fong for their position.
>
> \- Michael G. Colantuono
> Richards, Watson, & Gershon

NOTES:

2. Key Dates (Source: - Michael G. Colantuono, Richards, Watson, & Gershon)

January 1, 1995	Charter City General Tax Window Opens Prop. 218 requires non-voter approved general taxes adopted after January 1, 1995 to be presented for voter ratification by November 6, 1998 at an election in which City Council or Board of Supervisors seats are contested.
December 6, 1996	Last Date to Place a Measure on the March 1997 Ballot This deadline applies to general law cities under Elections Code Section 9225. County Registrars set earlier deadlines in some cases. Charter cities must consult their charters, which may set different requirements.
March 4, 1997	Election Day
July 1, 1997	Effective Date of Prop. 218 for Fees and Assessments The measure states that all new, increased, or existing property-related fees and assessments must comply with the measure's requirements by July 1, 1997 unless an exception applies. As to existing fees, a good argument can be made that the provisions of the measure are not triggered until it is necessary to adopt a fee, repeal a sunset clause, or increase a fee. As to assessments, it appears that the provisions of the measure will be triggered when an assessment is "levied." For many districts, such as those under the 1972 Landscaping and Lighting Act, assessments are levied annually and the effective deadline will be July 1, 1997. Assessments can also be levied for a period of years, as is typical when assessments finance capital improvements. These assessments may not need to be modified until an existing multi-year assessment expires. This will commonly apply to Fire Suppression Benefit Assessments.
August 8, 1996	Last Date to Place a Measure on the November 1997 Ballot Again this is the deadline of Elections Code Section 9225 for general law cities. County Registrars may set earlier deadlines and charter cities should consult their charters.
November 4, 1997	Election Day
November 6, 1998	Deadline to Validate "Window-Period" Taxes General taxes adopted without a vote of the people between January 1, 1995 and November 6, 1996 must be validated at the polls by November 6, 1998.
?	Expiration of Exception for Bonded Assessments and Fees Fees and assessments which have been formally pledged to repay bonds or other debt are protected from the requirements of Prop. 218 by the Contracts Clause of the Federal Constitution. This protection expires when the debt is paid off.

How to Comply With Prop 218



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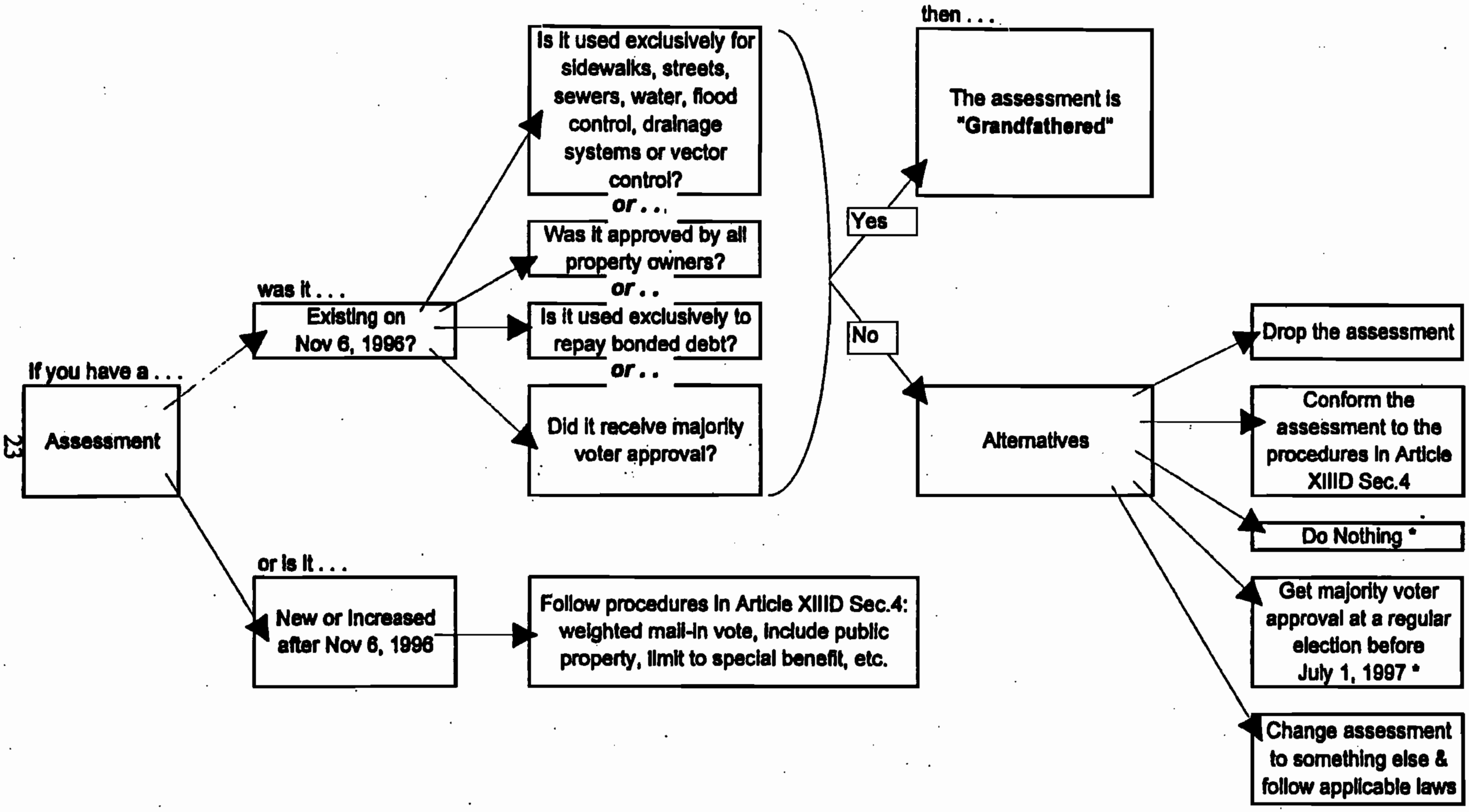
Prepared by Michael Coleman (mcoleman@dcn.davis.ca.us)

How to Comply With Prop 218



** Legal Interpretations differ*

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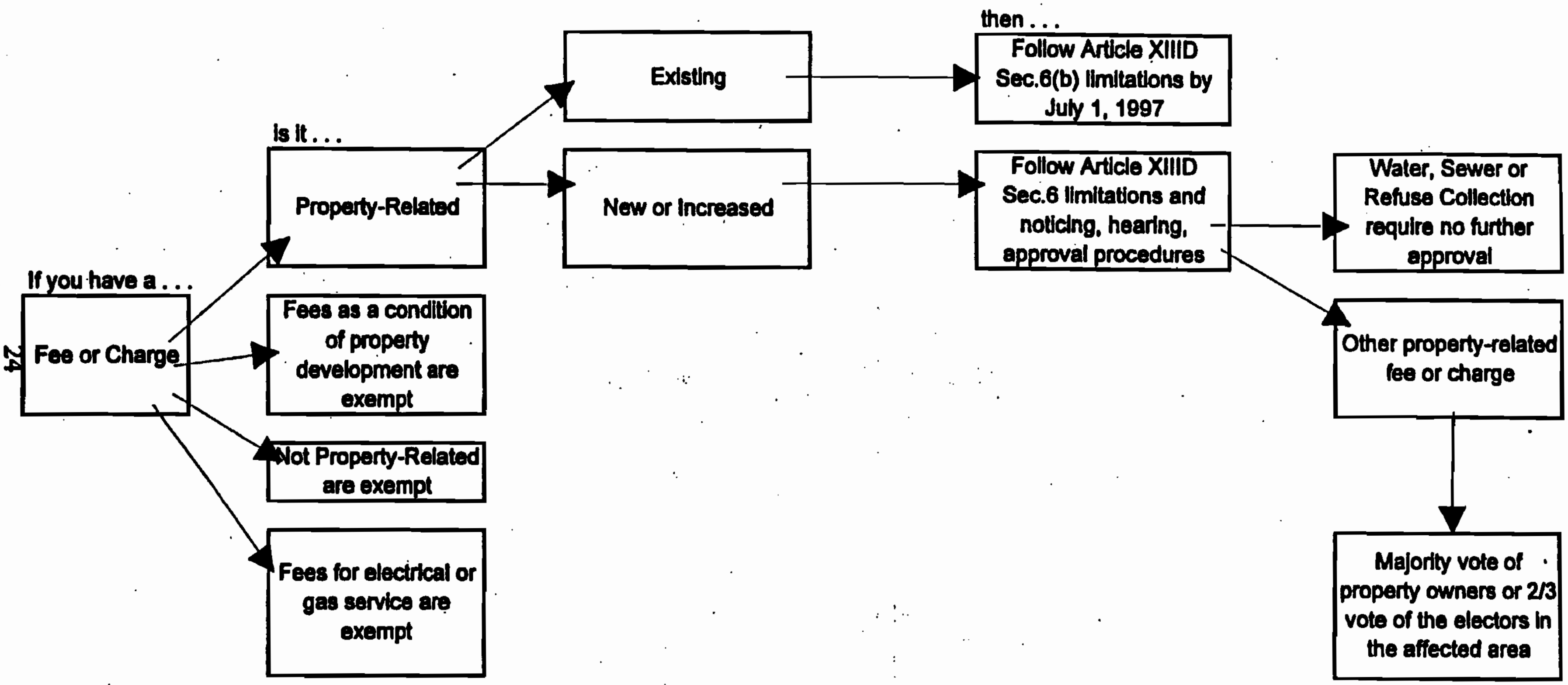
How to Comply With Prop 218



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Prepared by Michael Coleman (mcoleman@dcn.davis.ca.us)

City of Jarvisville

1996-97 REVENUE BUDGET

($ in 000s)

GENERAL FUND	1996-97 Budget	
Taxes		
Property Taxes	20,200	
Sales & Use Tax	22,500	
Business Operations Tax	2,500	Not changed since before 1985
Real Property Transfer Tax	1,250	Not changed since before 1985
Utility User Tax	18,700	Increased from 7% to 8% and extended to cell phones on July 1, 1995
Transient Occupancy Tax	900	On 7/1/94 Council approved increase from 11% to 12% - effective 3/1/95
In-Lieu Taxes - Enterprise Funds	700	0.25% of the real property assets of enterprise funds - imposed July 1991
Licenses and Permits		
Construction Permits	1,900	
Franchise Fees	1,990	includes 5% on Cable TV, 10% on Garbage Franchisee
In-Lieu Franchise Fees	2,250	Enterprise funds 5% of gross revenue - imposed July 1, 1991
Other Licenses/Permits	510	
Fines and Forfeitures	2,550	
Use of Money (interest)	650	
Intergovernmental	10,655	
Charges, Fees and Services		
Map/Publication Sales	5	
DUI Fees	150	
Services *to Other Depts (incl Enterprises)*	900	
Recreation Class Fees	550	
Parking Meter Receipts	1,500	
Street/Sidewalk/Curb Repairs	200	
Weed Abatement	100	
Abandoned Vehicle Abatement	250	
Demolition Charges	80	
Plan Check / Plan Review Fees	680	
EIS Fees	30	
Fire Permit Fees / Fire Inspection	130	
Advance Life Support Transport	3,000	Charged to user/insurance upon incident
Rental Real Property	220	
Concessions	100	
Admissions	250	
Other Fees & Charges	1,100	
Other Revenues (sale of property, etc.)	520	
TOTAL GENERAL FUND		97,020

City of Jarvisville

1996-97 REVENUE BUDGET

($ in 000s)

ENTERPRISE FUNDS		1996-97 Budget	
Parking Fund (City Parking Lots)		5,350	parking fees
Water Fund (Water Service Fees)		16,400	metered service - some older areas of city are on flat rate
Sewer Fund (Sewer Service Fees)		6,130	fee based on water usage
Storm Drainage Fund (Drainage Fees)		13,800	fee based on land-use type from engineering study
Solid Waste Fund			
Garbage Collection / Disposal	12,300		
Recycling	400		
Garden Refuse Collection	3,340		
Street Sweeping	500		
Subtotal: Solid Waste Fund		16,540	UtilityFees collect by City, paid to Garbage Franchisee
Marina Fund		1,200	boat slip rentals
Golf Fund		3,000	

OTHER GOVERNMENTAL FUNDS	1996-97 Budget	
Transportation Sales Tax	5,000	voter approved 1984
Gas Tax	3,830	
Subdivision Landscape Maintenance #225	50	streetscape, medians, soundwalls
Subdivision Landscape Maintenance #226	70	streetscape & park, approved by developer who owned it all
12th Street Maintenance Fund #227	8	entirely street improvements / maintenance
South Area Sewer Fund #240	26	entirely sewer, 100% property owner approved
Old Town Business Improvement Area	90	1
Downtown Business Improvement District	140	2
Library Benefit Assessment	1,000	3
Landscaping & Lighting Dist - Citywide	4,000	4
Fox Heights Mello Roos District	900	
Quimby Act Fund	1,200	developer fees as condition of development
Developer Contribution Fund	800	developer fees (AB1600) as condition of development

TOTAL ALL FUNDS	176,554

1) Business Improvement Area established 1991 under the Parking/Business Improvement Area of 1989. All business tenants in area charged. Used for improvements, maintenance, marketing.

2) Business Improvement District established 1995 under the Business Improvement District Law of 1994. Property owners in business district charged. Majority representing more than 50% of the total assessed $ signed petition favoring formation. Used for security, improvements, maintenance, marketing.

3) Citywide Benefit Assessment under 1982 Benefit Assessment Act. Formed by City Council without public vote. Used for library services.

4) Formed by City Council under the 1972 Landscaping and Lighting Act. About 25% is street related improvements & maintenance (street lighting, medians, soundwalls, streetscape, street trees), 10% is debt service for park improvements, 60% is park imprvmts&maintnce.

PROPOSITION 218

RIGHT TO VOTE ON TAXES ACT

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

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.

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

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.

(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.

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

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.

(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.

(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.

(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.

SECTION 4. ASSESSMENT AND PROPERTY RELATED FEE REFORM.

Article XIIID 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 XIIIC 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; or

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

SEC. 2. Definitions.

As used in this article:

(a) "Agency" means any local government as defined in Article XIIIC, 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.

(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.

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

(i) "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.

(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 XIIIA of this Constitution.

(2) Any special tax receiving a two-thirds vote pursuant to Article XIIIA, Section 4 of this Constitution.

(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.

SEC. 4. Procedures and Requirements for All Assessments.

(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.

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

(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 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.

(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.

(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.

(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).

SEC. 5. Effective Date

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 approval process set forth in Section 4:

(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;

(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;

(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; 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.

SEC. 6. Property Related Fees and Charges.

(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.

(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.

(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:

(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.

(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.

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

(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.

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.

(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.

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.

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

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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)

The Assessment Process Under Current Law Compared to the Assessment Process Under Proposition 218 — An Example

Example of a Proposed Property Assessment

City X proposes to levy a street lighting assessment under the Landscaping and Lighting Act. The size of the proposed assessment district is 10,000 acres, consisting of 25,000 parcels of property.

The Assessment Process Under Current Law

City X must hold at least one public meeting and public hearing on the proposed assessment. Notice of the proposed assessment must be given by mail to the 25,000 property owners subject to the proposed assessment.

NO election is required. However, property owners subject to the proposed assessment may file a written protest against the assessment, but City X is *not* required to provide a protest form. City X must abandon the proposed assessment if there is a majority protest. A majority protest exists if, upon the conclusion of the public hearing, written protests filed represent property owners owning more than 50 percent of the *total* area of assessable lands within the proposed assessment district. In the example, this corresponds to the 5,000 acres of assessable lands within the proposed district (an *absolute* majority of the 10,000 acre size of the district).

Only *property owners* may file a written protest against the assessment. This *includes* nonresident property owners. Renters have *no* right to file a protest. Each protest is *weighted* according to the *size of the parcel*, without regard to the amount of assessment paid or the use of the property. Under current law, if a property owner does not file a written protest, it is counted as though the owner *supports* the assessment. This inequity makes it *extremely difficult* to legally block an assessment.

The Assessment Process Under Proposition 218 (The Right to Vote on Taxes Act)

City X must hold at least one public hearing on the proposed assessment. Notice of the proposed assessment must be given by mail to the 25,000 property owners subject to the proposed assessment.

An election is *required*. City X must include a ballot on the proposed assessment with the mailed notice. City X must abandon the proposed assessment if there is a majority protest. A majority protest exists if, upon the conclusion of the public hearing, a majority of those *submitting* ballots oppose the assessment. Ballots are weighted according to the amount of assessment owed by each parcel (rather than by the size of the parcel under the current protest procedure).

Property owners and renters directly liable to pay the proposed assessment may cast ballots. As is the case under current law, nonresident property owners may participate. If a property owner does not submit a ballot, it counts neither for nor against the proposed assessment, which is consistent with standard voting practice. The determination of majority protest is based only on those ballots actually *submitted*. This is a more reasonable standard which will make it easier to block an assessment.

Prepared and distributed by YES on 218, a project of the Howard Jarvis Taxpayers Association, a nonprofit, tax-exempt organization, 621 South Westmoreland Avenue, Los Angeles, CA 9005-3971

HOWARD JARVIS
TAXPAYERS
ASSOCIATION

HOWARD JARVIS, Founder (19[illegible]-1986)
ESTELLE JARVIS, Honorary Chairwoman
JOEL FOX, President
TREVOR GRIMM, General Counsel
JONATHAN M. COUPAL, Director of Legal Affairs

September 16, 1996

RECEIVED
SEP 19 1996
City Manager's Office

Gene Rogers, City Manager
City of Moreno Valley
14177 Frederick Street
P.O. Box 88005
Moreno Valley, CA 92552-0805

Dear Mr. Rogers:

Thank you for your letter of September 10, 1996. Thank you also for deleting the misstatements in the staff analysis regarding the title of Proposition 218.

You indicated that you would like further information on our interpretation of the initiative. In the spirit of cooperation, please find enclosed a copy of the annotated version of the initiative which addresses several of the issues which have arisen since Proposition 218 qualified. We have distributed this document to a number of individuals in the hopes that the arguments being circulated by our opponents, which overstate the impact of the initiative, are adequately answered.

I hope you find our analysis illuminating.

Sincerely,

Jonathan M. Coupal
Director of Legal Affairs

JMC/dh

encl.

OFFICE OF LEGAL AFFAIRS: 921 11th Street, Suite [illegible], Sacramento, CA [illegible] • (916) [illegible], Fax: (916) [illegible]
HEADQUARTERS: 621 South Westmoreland Avenue, Suite 202, Los Angeles, CA 90005-3971 • (213) 384-9656, Fax: (213) 384-[illegible]

RIGHT TO VOTE ON TAXES ACT (PROPOSITION 218)

[ANNOTATED AS OF SEPTEMBER 5, 1996] By HJTA

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 XIIIC 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.

[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.

[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 than 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

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 XIIID 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 XIIIC 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 XIIIC, 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 <u>directly</u> 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.

(l) "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 XIIIA of this Constitution.

(2) Any special tax receiving a two-thirds vote pursuant to Article XIIIA, 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.

(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 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.]

(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 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

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.]

(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

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]

(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.]

League of California Cities, 1400 K Street, Sacramento, CA 95814
phone: 916/658-8200; fax: 916/658-8240

Living With Proposition 218 Tape Order Form

You may purchase the handbook and the audio tapes of the meeting for $50 by faxing this request to 916/658-8240 or mail to 1400 K Street, Sacramento, 95814 Attn.: Publications. Please complete the following:

Name: ______________________________ Title: ______________________

City: ____

Shipping Address: ____

City : ______________________________ Zip Code: ___________________

Phone: _____________________________ FAX : ______________________

_____ City Check _____ Personal Check _____ VISA _____ Master Card

Name on Credit Card: ____

Credit Card Number : __________________________ Exp. Date: ____________

Authorized Signature: ____

Prepayment is required. Tax and shipping included.

The League will be having two meetings in January covering the topic of Proposition 218. One in Northern California and the other in Southern California. The exact locations and dates will be forthcoming.

EXHIBIT 16

EXHIBIT 16

Intentionally omitted

EXHIBIT 17a

Contact: Ron Roach (916) 441-0490

INSIDE TAXES COMMENTARY -- October 1, 1996

What's so wrong about voter approval to raise taxes?

By Larry McCarthy

Too many taxes are masquerading as fees, escaping the ballot box scrutiny of California citizens who are paying them.

State and local fees and assessments are the fastest growing component of California's tax burden, increasing by $1.7 billion in 1992-93 alone.

Now voters have an opportunity to weigh in on the issue: Proposition 218 on the November 5 general election ballot.

This initiative deserves support, and here is why:

- Equal treatment of all taxpayers. Perhaps the most important provision of 218 is that it grants all taxpayers, including those who live in charter cities, the right to vote on new or increased taxes.

  Proposition 62, a voter-approved initiative reinstated by the state Supreme Court last year, attempts to treat residents of charter and general law cities alike, but this was a statutory initiative and there is a legal debate over whether its vote requirements apply to charter cities. Proposition 218 is a constitutional amendment, which would cut through mounds of litigation.

- Growth in benefit assessments. Since Proposition 13 reduced property taxes in 1978, benefit assessments have grown dramatically. City-levied assessments rose almost ten-fold as of 1992-93. Non-enterprise special districts have increased assessments over 4,000% -- more than 40 times the level before Proposition 13.

- Assessments are a *de facto* split roll, whereby one class of taxpayer is assessed a higher tax than another. Many benefit assessments levy disproportionate burdens on business taxpayers, presumably to entice more support from local homeowners.

- Assessments are being overused. Traditionally, benefit assessments were used to pay for physical improvements that enhance property value, such as roads, sewers, sidewalks and street lights. These kinds of assessments should be allowed. However, in recent times, assessment laws have broadened to allow financing of services that appear to have no direct benefit to property.

In some cases, the whole philosophy of benefit assessments has been turned on its head, and assessments are now used for such general government services as emergency services, flood control, parks, habitat for endangered species, open space acquisition, school landscaping and beach cleanup. Including emergency police and fire response, these are general government services and are appropriately financed by taxes, not benefit assessments.

17 a

Proposition 218, which is called "The Right to Vote on Taxes Act" by its sponsors, will provide taxpayers clear protections, reiterating existing law in ways intended to erase all doubt about how far a government can reach into taxpayers' pockets. It will apply needed brakes to the end-run practice of disguising taxes as fees to avoid existing requirements for voter approval.

Taxes disguised as fees have mushroomed all over California in the wake of Proposition 13, the 1978 initiative that reduced property taxes and restricted their growth.

In the final analysis, voters should ask themselves: What's wrong with voters deciding whether to raise taxes?

What's wrong with requiring policymakers to justify their budget decisions and convince the electorate to dig deeper for more tax dollars?

The hunch here is those who budget existing revenues wisely will have less difficulty winning voter approval for the taxes they need to operate their cities and counties.

#

For Immediate Release -- October 1, 1996

Contact: Ron Roach (916) 441-0490

Cal-Tax opposes anti-taxpayer measures on Nov. 5 ballot

SACRAMENTO -- Concerned over negative effects on the state's recovering economy, the California Taxpayers' Association (Cal-Tax) is on record opposing Proposition 217, the $700-million-a-year tax increase initiative, as well as six other November 5 election initiatives that would damage the state's job-producing business climate.

Cal-Tax's Board of Directors also opposes initiatives that would drive up health care costs and immunize lawyers against limits on their fees, as well as a measure that would make the state's courts a Mecca for securities lawsuits. The board also opposes an initiative to increase the minimum wage.

Meanwhile, Cal-Tax has endorsed Proposition 218, the initiative designed to reinforce voters' rights to decide whether they should pay higher taxes, and Proposition 213, a measure that would tighten laws affecting drunken drivers.

Directors also endorsed all three bond measures, including propositions to provided needed funding for clean water and criminal justice facilities.

At meetings in September and June, Cal-Tax directors decided to:

- Support **Proposition 204**, the $995-million Safe, Clean, Reliable Water Supply Act, which Cal-Tax believes is important for California's economic development.
- Support **Proposition 205**, the $700-million Youthful and Adult Offender Local Facilities Bond Act. Cal-Tax considers the adequate criminal justice facilities necessary for public safety, which is an important quality-of-life and business climate issue.
- Support **Proposition 206**, the $400-million Veterans' Bond Act. These bonds are self-liquidating through the Cal-Vet Program and have not imposed an obligation on taxpayers.
- Oppose **Proposition 207**, the initiative that prohibits restrictions on the right to negotiate attorneys' fees. Cal-Tax has consistently supported tort reform as a business climate issue, and this initiative, sponsored by trial lawyers, is an attempt to prevent meaningful reform through the legislative process.
- Make no recommendation on **Proposition 208**, one of two rival initiatives dealing with campaign finance limitations (see opposition to Proposition 212).
- Make no recommendation on **Proposition 209**, the prohibition against discrimination or preferential treatment by public entities.
- Oppose **Proposition 210**, which would increase California's minimum wage. This measure would hurt small businesses. It would increase administrative burdens by creating two more wage changes on top of those already required under new federal law.
- Oppose **Proposition 211**, which would make it easier to file securities law claims in California courts. These are the same kinds of cases that have been disallowed in federal courts by an act of Congress. This initiative is sponsored by a lawyer who specializes in such cases, and would create a hostile environment for businesses, particularly in the high-tech area.
- Oppose **Proposition 212**, an initiative to limit campaign contributions and spending. Cal-Tax took no

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position on Proposition 208, but was compelled to oppose 212 because it would result in increased taxes on individuals and groups who advocate issues before legislative and governmental regulatory bodies. Proposition 208 does not contain this particularly egregious provision.

- Support **Proposition 213**, an initiative that would deny pain-and-suffering claims for uneconomic losses to drunken drivers and uninsured motorists. It also would deny felons rights to recover damages for injuries incurred during the commission of a crime.
- Oppose **Proposition 214**, an initiative to regulate the health care industry. This measure would increase costs, requiring cuts in other programs or higher taxes.
- Make no recommendation on **Proposition 215**, which would allow medical use of marijuana.
- Oppose **Proposition 216**, a health care regulation initiative that rivals 214. This measure is opposed for similar reasons.
- Oppose **Proposition 217**, a retroactive tax increases that would reimpose 10% and 11% personal income tax brackets. This initiative would raise taxes on small business owners who pay personal income taxes, not the bank and corporation tax.
- Support **Proposition 218,** which would require voter approval of local government taxes. This measure is needed to protect taxpayers from local governments that have devised methods of skirting vote requirements of voter-approved initiatives. It also is needed so that residents of charter and general law cities are treated equally.

Cal-Tax, founded in 1926, is a nonpartisan research and advocacy association, primarily of business members, with the mission of protecting taxpayers from unnecessary taxes and promoting efficient, quality government services.

(Note: Detailed descriptions and analyses of the 15 November 5 statewide ballot propositions are available on the Internet via "CalTax Online" -- http://www.caltax.org)

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October
1996

Cal-Tax Ballot Brief

Summaries of November 5, 1996 Ballot Propositions

Click here to see Cal-Tax's positions on these measures.

Proposition 204

Safe, Clean, Reliable Water Supply Act.

Legislative Statute (SB 900, Jim Costa and David Kelley)

Major Provisions:

- Allows sale of $995 million in general obligation (G.O.) bonds for improvements in the San Francisco Bay and delta of the Sacramento and San Joaquin rivers ($193 million for levee repairs and wildlife habitat); ecosystem restoration ($390 million to match federal funds for environmental restoration and fish and wildlife habitat improvements); clean water and water recycling ($235 million for loans and grants to local agencies); water supply reliability ($117 million for conservation, groundwater recharge and river corridor parkways, and local flood control and prevention ($60 million for levee repairs).
- Changes the 1988 water bond act (Proposition 83) by allowing the repayment of $40 million in loans to local agencies to be used instead for a revolving loan program.

Background:

As of June 1996, all but $79 million of $2 billion authorized by previous water bond acts had been committed. Additionally, the CALFED Bay-Delta Program, a joint state and federal effort to restore ecological health and improve water management, calls for funding of $4 billion to $8 billion over the next 20 to 40 years. Flood control, which the state had funded in the past from the general fund but has been unable to fund recently, requires a state infusion of $158 million. Specified water development and clean water projects would be funded by this measure, and also by a new revolving loan program.

Fiscal Impact:

According to the Legislative Analyst, the general fund cost of Proposition 204 would be up to $1.8 billion ($995 million principal, $776 million interest). The average payment over 25 years would be up to $71 million per year.

As of July 1, 1996, state general fund bond debt totaled $20.2 billion ($14.3 billion in G.O. bonds and $5.9 billion in lease payment bonds). Unsold were $9 billion in authorized bonds awaiting project approvals. Debt

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payments for 1996-97 should total about $2.4 billion, increasing to $2.9 billion in 1999-00 as authorized bonds are sold. This represents a debt ratio increase (debt payments as a percentage of the state general fund) to 5.3% in 1998-99, and declining thereafter. The debt ratio in 1990-91 was less than 3%.

If all three bond measures on the November ballot were approved, the Legislative Analyst projects the bond debt payments would remain at $2.9 billion for two more years, through 2001-02. General fund bond debt would total $21.3 billion, and the debt ratio would remain at 5.3% an additional year through 1999-2000 and decline thereafter. Voter approval at subsequent elections and authorization of additional lease-payment bonds would increase those figures.

Support Arguments:

- Unless we act now, California's residents, businesses and farms face a future of chronic water shortages and potentially unsafe supplies.
- Proposition 204 is a balanced water solution that is good for our economy and jobs, good for our environment and good for all Californians.
- The last major investment in our water supply system occurred 36 years ago, in 1960.

Support arguments signed by: Senator Jim Costa, chair, Senate Agriculture and Water Resources Committee; Stephen Hall, Association of California Water Agencies; Gerald H. Meral, Planning and Conservation League; Thomas S. Maddock, California Chamber of Commerce Water Committee; David N. Kennedy, California Department of Water Resources, and Sunne Wright McPeak, Bay Area Economic Forum.

Opposition Arguments:

- Using bond financing almost doubles the cost of any government project.
- Taxpayers should not be put on the hook for water pollution damage caused by private businesses and individuals.
- Many of Proposition 204's provisions could cause serious damage to private property rights. Armies of bureaucrats will march through the Sacramento Delta to impose rules and regulations.

Opposition arguments signed by: Gail Lightfoot, Libertarian Party of California; Jon Petersen, Libertarian Party of California; Dennis Schlumpf, Tahoe City Public Utility District, and Ted Brown, insurance adjuster/investigator.

Proposition 205

Youthful and Adult Offender Local Facilities Bond Act of 1996.

Legislative Statute (AB 3116, Jim Brulte)

Major Provisions:

- Allows a general obligation bond issue of $700 million to fund construction, renovation, remodeling and replacement of local facilities that are used to treat, rehabilitate, and punish juvenile offenders ($350 million) and adult offenders ($350 million).

- In order for a county to receive bond funds, it would have to provide 25 percent of the project's cost in matching funds (subject to waiver by the Legislature). The county would also have to provide a plan for providing services for juvenile and adult offenders ranging from prevention through detention; show that the county has used, to the greatest extent possible, alternatives to detention, and identify how the county will maximize all funding sources (local, state and federal) for providing services to offenders.

Background:

Almost all juvenile halls to house the more than 50,000 juvenile offenders in the state report overcrowding. Since 1988, voters have approved $100 million in G.O. bonds for juvenile facilities. These bonds are fully committed. According to a 1995 assessment, $350 million is needed to upgrade and develop new juvenile facilities.

There were more than 1.1 million adults booked in California jails in 1995. Because of overcrowding, many inmates serve only a fraction of their sentence. In 1995, more than 21,000 persons per month were released early from jails because space was lacking to house them. The Board of Corrections has identified a need for an additional 30,000 beds by the year 2000.

Since 1981, $1.6 billion in G.O. bonds has been raised to expand and improve county jail facilities; all funds are committed.

Fiscal Impact:

According to the Legislative Analyst, the general fund cost of Proposition 205 would be up to $1.25 billion ($700 million principal, $550 million interest). The average payment over 25 years would be up to $50 million per year. The Analyst also notes that counties would incur unknown increased costs, in the millions of dollars per year, to operate the facilities built with these bond funds.

Support Arguments:

- Proposition 205 is urgently needed to keep violent criminals out of our schools and neighborhoods and keep them behind bars.
- Without funds from this bond proposal, thousands of convicted criminals will be released early.
- California's tough "three strikes" law is working to remove violent criminals from our streets. But without adequate county jail space, criminals who have already received their first and second strikes could be released early.

Support arguments signed by: Assem-blymembers Jim Brulte and Paula Boland; Senator Bill Lockyer; Harriet C. Salarno, founder of Justice for Murder Victims, and Orange County Sheriff Brad Gates.

Opposition Arguments:

- "Three strikes" is designed to lock up career criminals who are housed in state prisons, not in county jails.
- To save taxpayers money, nonviolent convicts should be placed under house arrest and monitored

electronically.
- Of the prisoners in county jails, some are dangerous, some aren't. In fact, 50% of all crime is related to drug use, including simple possession of controlled substances. We believe that only criminals who are violent and dangerous to others should be locked up.

Opposition arguments signed by: Gail Lightfoot, Libertarian Party of California; Jon Petersen, Libertarian Party of California; Douglas F. Webb, criminal defense attorney; Ronald Payne, National Guard military police, and Ted Brown, insurance adjuster/investigator.

Proposition 206

Veterans' Bond Act of 1996.

Legislative Statute (SB 852, Don Rogers)

Major Provisions:

Provides a general obligation bond issue of $400 million to fund home and farm loans for veterans.

Background:

The money from veterans' bond sales is used by the Department of Veterans Affairs to purchase farms, homes, and mobilehomes which are then resold to California veterans. Veterans' payments to the department are sufficient to cover all costs; there is no direct cost to taxpayers.

Since 1921, voters have approved about $7.5 billion of G.O. bond sales. As of July 1996, only $250 million remained of these funds. The Department of Veterans Affairs advises that funds from Proposition 206 would enable at least 2,000 additional veterans to receive loans.

Fiscal Impact:

According to the Legislative Analyst, the cost of Proposition 206 would be $700 million ($400 million principal, $300 million interest). Average payment for both would be $28 million per year for 25 years. The Cal-Vet program has been totally supported by the participating veterans, with no direct cost to taxpayers.

Support Arguments:

- Voter-approved G.O. bonds finance assistance to veterans, who repay all costs. The Cal-Vet program does not cost the taxpayer one thin dime.
- The Cal-Vet program is an appropriate expression of our appreciation and thanks for the sacrifices of U.S. veterans.
- In addition to helping veterans, Cal-Vet farm and home loans generate thousands of jobs and millions of dollars in annual payrolls.

Support arguments signed by: Senator Don Rogers, Assemblymember Jim Morrissey, and Lieutenant Governor Gray Davis.

Opposition Arguments:

- California's real estate market is not as strong as it used to be. If participating veterans default on their loans, taxpayers will have to pay.
- Since it duplicates the federal VA home loan program, Cal-Vet is merely another unnecessary government program.
- Contrary to its proponents' claims, Proposition 206 will not generate jobs and millions of dollars in new payrolls. The housing market in California is no longer booming; there are more houses for sale than people to buy them.

Opposition arguments signed by: Jon Petersen, Libertarian Party of California; Joseph B. Miller, retired Air Force officer; Ted Brown, insurance adjuster/investigator, and Willard Michlin, real estate broker.

Proposition 207

Attorneys. Fees. Right to Negotiate. Frivolous Lawsuits.

Initiative Statute

Sponsor: Consumer Attorneys of California

Major Provisions:

- Prohibits any restriction on the right to negotiate attorneys' fees.
- Prohibits attorneys from charging excessive fees by adopting existing State Bar rules.
- Authorizes courts to sanction attorneys who file frivolous lawsuits and allows attorneys to appeal any proposed sanctions.
- Requires the State Bar to recommend appropriate discipline for attorneys with repeated sanctions.

Background:

Current law places few limitations on fees attorneys can charge clients. Notwithstanding, there have been repeated efforts to limit attorney fees. This measure would pre-empt future efforts to impose fee limits by requiring a vote of the electorate. A two-thirds vote of the Legislature could make changes if they further the purpose of the initiative.

Fiscal Impact:

According to the Legislative Analyst, the net fiscal impact of Proposition 207 is unknown, but probably insignificant. There could be fewer lawsuits filed due to the sanctions for filing frivolous lawsuits, but there could also be increased courtroom use for appeals filed by sanctioned attorneys.

Support Arguments:

- Lobbyists for multi-million dollar insurance companies want to make it impossible for consumers to hire contingency fee attorneys.
- The measure punishes irresponsible lawyers no matter which side they are on.
- The measure takes all fees away from lawyers who indulge in frivolous lawsuits.

Support arguments signed by: Mary E. Alexander, Consumer Attorneys of California.

Opposition Arguments:

- Proposition 207 will mean more frivolous lawsuits, costing consumers millions of dollars a year in higher costs for such things as insurance and health care.
- The measure doesn't protect us from greedy lawyers and lawsuit abuse - it just protects their fees.
- Trial lawyers support Proposition 207 because it is intended to prevent limitations on their fees and will not prohibit them from filing lawsuits. Their real intent is to lock in their ability to take whatever fee they can get from a client.

Opposition arguments signed by: John Sullivan, Association for California Tort Reform; Martyn B. Hopper, National Federation of Independent Business/California; Assemblymember Bill Morrow, chair of the Assembly Judiciary Committee, and Sara F. Cheaure, Citizens Against Lawsuit Abuse.

Proposition 208

Campaign Contributions and Spending Limits. Restricts Lobbyists.

Initiative Statute

Sponsor: Californians for Political Reform

Major Provisions:

- Limits campaign contributions that individuals or groups can make. Prohibits the transfer of campaign funds. Prohibits lobbyists from making contributions.
- Increases allowable contribution amounts if voluntary campaign spending limits are accepted.
- Limits the amount of personal loans candidates may make.
- Limits when fundraising may take place.
- Establishes and increases penalties for campaign violations.
- Requires that campaign advertisements on ballot measures disclose names of donors contributing above specified levels.

Background:

Federal law places limits on campaign contributions for individuals and groups. California, generally, has no similar restrictions, although some localities have imposed limits.

Similarly, state law places no restrictions on candidate spending from personal sources, including personal loans, nor does it restrict campaign expenditures from campaign committees.

Past efforts to impose limits on contributions and/or spending (Propositions 68 and 73) have been nullified by the courts.

Fiscal Impact:

The Legislative Analyst estimates an annual cost of $4 million to administer and enforce Proposition 208 and additional but insignificant state and local election costs.

Support Arguments:

- Proposition 208 will bring an end to special interests and their high-priced lobbyists buying political influence with campaign contributions.
- The measure reforms all levels of government, from City Hall to the Governor's Office, and will give California the toughest campaign finance law in the nation.
- The measure is the only genuine campaign reform measure on the ballot.

Support arguments signed by: Tony Miller, Californians for Political Reform; Fran Packard, League of Women Voters; Jean Carpenter and Robert Holub, American Association of Retired Persons, and Ruth Holton, California Common Cause.

Opposition Arguments:

- Proposition 208 is cosmetic; it doesn't provide an overhaul of the current system.
- The measure is soft on special interests, on lobbyists, and on campaign spending.
- The measure only replicates ineffectual federal campaign finance laws which have left Congress awash in special interest money.

Opposition arguments signed by: Ed Maschke, California Public Interest Research Group; Yvonne Vasquez, Association of Community Organizations for Reform Now; Amy Schur, Association of Community Organizations for Reform Now; Fernando Igrejas, Californians Against Political Corruption; The Reverend Dr. Carol Edwards, and Richard Solomon, professor of law and legal ethics.

Proposition 209

Prohibition Against Discrimination or Preferential Treatment by State and Other Public Entities.

Initiative Constitutional Amendment

Sponsor: California Civil Rights Initiative committee

Major Provisions:

- Prohibits all state and local governments from giving preferential treatment to any individual or group in employment, education or public contracting on the basis of race, sex, color, ethnicity, or national origin.
- Excludes from this prohibition preferential treatment by government agencies that receive money under federal programs that require affirmative action.

Background:

Current law provides for targeting or "affirmative action" to increase opportunities for various groups, including women and racial and ethnic minority groups. These preferences or set-asides, which rose out of the civil rights movement, were deemed remedies for past discrimination. More recently, there has been a backlash over quotas and reverse discrimination. Proposition 209 would disallow preferential treatment based on race, sex, color, ethnicity, or national origin.

Fiscal Impact:

According to the Legislative Analyst, the elimination of affirmative action programs would result in savings to state and local government. These savings would occur for two reasons: government agencies would no longer have the expense of administering affirmative action programs, and secondly, the prices paid on some government contracts would decrease. Savings are estimated to total tens of millions of dollars each year.

Additionally, school spending for voluntary desegregation programs, tutoring and outreach, could be lower by some $75 million. However, because of Proposition 98 guarantees, total spending would remain the same, i.e., the $75 million would be expended for other school purposes.

In the state university systems, spending for similar tutoring, financial aid and outreach programs would no longer be required, resulting in a savings of $50 million. As this funding is not protected by the Proposition 98 guarantee, overall higher education spending could be lower.

Support Arguments:

- "Reverse discrimination" based on race or gender is plain wrong.
- Proposition 209 will stop the practice of race and gender classification which is dividing our people and tearing us apart. People naturally feel resentment when the less qualified are preferred.
- Hiring, promotions and university admissions ought to be solely based on merit.
- Discrimination is costly. Government agencies waste tax dollars for costly bureaucracies to administer affirmative action programs, and they waste much more money on high-bid contracts based on unfair set-asides and preferences.

Support arguments signed by: Governor Pete Wilson; Ward Connerly and Pamela A. Lewis, both of the California Civil Rights Initiative; California Attorney General Dan Lungren; Senator Quentin Kopp, and Gail L. Heriot, professor of law.

Opposition Arguments:

- Proposition 209 creates a loophole that allows discrimination against women.
- Ridding of affirmative action does not guarantee a meritocratic system.
- The measure means opportunity based on favoritism.
- The measure is so broad and misleading that it eliminates equal outreach opportunity programs, including tutoring and mentoring for minority and women students, and programs designed to encourage girls to study and pursue careers in math and science.

Opposition arguments signed by: Prema Mathai-Davis, YWCA of the USA; Karen Manelis, California American Association of University Women; Wade Henderson, Leadership Conference on Civil Rights; Fran Packard, League of Women Voters of California; Rosa Parks, civil rights leader, and Maxine Blackwell, Congress of California Seniors.

Proposition 210

Minimum Wage Increase.

Initiative Statute

Sponsor: Liveable Wage Coalition

Major Provisions:

- Increases the state minimum wage for all industries from the current $4.25 per hour to $5.00 per hour on March 1, 1997.
- Increases the minimum wage to $5.75 per hour on March 1, 1998.

Background:

Minimum wage standards were first enacted in California in 1916, and at the federal level in 1938. At present, state and federal laws are similar. Where differences occur, employers usually must conform to the law providing higher wages and broader coverage.

Thirty-nine states, including California, require a minimum wage equal to the federal minimum of $4.25 per hour. Eleven states require higher wages, ranging from $4.27 to $5.25 per hour.

At the federal level, an increased minimum wage has just been enacted - to $4.75 per hour this year and $5.15 per hour next year. California's minimum wage will automatically rise to the new federal level effective October 1, 1996.

Approximately two million (out of 13 million) California wage earners are paid less than $5.75 an hour. About one-fourth of all minimum wage earners are teenagers. Industries paying minimum wages include restaurants and fast food franchises, nursing facilities and child care.

The last change in California's minimum wage occurred in 1988, when it was raised to $4.25 per hour from

$3.35.

Fiscal Impact:

According to the Legislative Analyst, there would be an unknown net impact on state and local government revenues, depending on the effect of the measure on employment, income, and taxable sales in California. State and local governments costs would increase by approximately $300 million due to the higher cost of providing public services. Net annual savings in state health and welfare programs, potentially in the low tens of millions of dollars, could result due to more wage earners collecting income above AFDC and Medi-Cal thresholds.

Note: Adoption of a higher federal minimum wage causes the specific effect of this measure to be reduced by about half. Costs would remain the same, but half would be attributable to the federal minimum wage and half to the higher state minimum wage.

Support Arguments:

- Because of inflation, California's minimum wage buys less today than at any time in the past 40 years. Proposition 210 restores the purchasing power of the minimum wage.
- Higher minimum wages will make work more rewarding than welfare.
- California's economy will benefit from having consumers with more money to spend.

Support arguments signed by: Rev. Kathryn Cooper-Ledesma, California Council of Churches; Dr. Regene Mitchell, Consumer Federation of California; Howard Owens, Congress of California Seniors; Kenneth Arrow, Nobel Laureate in economics; Cliff Waldeck, California Small Business Owners Alliance, and Senator Hilda Solis, chair, California Legislature Women's Caucus.

Opposition Arguments:

Passage of Proposition 210 will put people out of work.

- Studies show that minimum wage increases make it harder for people to get off welfare by making it tougher for low-skilled workers to get jobs.
- Proposition 210 will place additional burdens on small businesses, which provide most of the job growth in California.

Opposition arguments signed by: Sheldon Grossman, owner, Bixby Knolls Car Wash, Long Beach; Connie Trimble, owner, Barron's Family Restaurant, Burbank; William H. Merwin, owner, Hunn & Merwin & Merwin Farm, Yolo County; Milton Friedman, Nobel Laureate in economics; William R. Allen, former president, Western Economic Association, and Michael Darby, former undersecretary for economic affairs, U. S. Department of Commerce.

Proposition 211

Attorney-Client Fee Arrangements. Securities Fraud.

Initiative Statute

Sponsor: Citizens for Retirement Protection and Security

Major Provisions:

- Extends liability in California securities law beyond the limits of federal law by allowing aiding and abetting claims, claims specifically disallowed by the U.S. Supreme Court.
- Creates new liability for actions that result in a loss to pension funds and retirement savings.
- Lowers the culpability standard by recognizing "recklessness" as a basis for liability.
- Requires juries to award punitive damages, which are not permitted in federal securities law.
- Codifies and expands the "fraud on the market doctrine" allowing plaintiffs to claim and recover damages without proof that they relied upon, or even read, allegedly fraudulent statements. The California Supreme Court previously rejected this doctrine as a matter of state law.
- Subjects all defendants to full joint and several liability.
- Allows the assertion of derivative securities fraud claims without regard to existing limitations on these claims.
- Prohibits regulation of plaintiffs' lawyer fee arrangements.

Background:

Lawsuits alleging securities fraud have become a major problem for high technology companies, costing them billions of dollars in legal costs and countless hours of wasted management time. Last year, they helped forge a bi-partisan coalition strong enough to override a Clinton veto and enact important reforms to this area of federal law.

The initiative - often called the Lerach initiative after its author and chief sponsor, Bill Lerach, a securities lawyer - would make California state law much more plaintiff-friendly in securities cases. It would be more favorable, in fact, than the pre-reform federal securities law. Supporters include high-profile lawyers, like Lerach, who specialize in filing securities cases, as well as several senior citizens groups and union organizations.

Fearing an outbreak of abusive securities lawsuits in California state courts, a broad coalition has formed to oppose this initiative, including the California Chamber of Commerce, the Association for California Tort Reform, senior groups, high technology and financial services companies and small business associations. Both major party candidates for President oppose Proposition 211.

Fiscal Impact:

If passed, the initiative would shift securities cases historically brought in federal court into what would become a much more plaintiff-friendly California state court system. Since California would be the only state in the nation to circumvent the federal securities reforms, lawyers from around the country would have an incentive to file securities cases in California state courts.

The increased costs of more securities cases burdening California state courts is undetermined. However, the initiative would bring many more of these major, complex securities cases to the California judicial system, adding significant administrative costs and demands for new judges.

Support Arguments:

- Americans lose $1 billion a year to investment swindlers, according to the Federal Trade Commission, and Congress has gutted the law that allowed victims of Charles Keating's fraud to recover most of their money.
- The initiative requires full disclosure of all information affecting the value of pension and retirement funds. The initiative gives retirees and pension plan participants the right to sue if they believe that their savings have suffered losses due to fraudulent misrepresentation or reckless investment practices.
- Corporate wrongdoers violating the provisions of the measure would be liable for punitive damages.Consumers, the elderly and retirees would retain the right to freely contract with an attorney in cases of securities fraud or other civil matters.

Support arguments signed by: Lois Wellington, Congress of California Seniors; Kenneth E. Wilson, Retired Public Employees Association of California; Ramona E. Jacobs, victim of Charles Keating's Lincoln Savings & Loan fraud; John R. Quatman, senior prosecutor, fraud division, and James Kenneth Hahn, Los Angeles city attorney.

Opposition Arguments:

- The measure is a sneaky attempt by lawyers to circumvent the carefully crafted reforms enacted by Congress last year, making California the Mecca for abusive and frivolous securities lawsuits. Taxpayers would have to pay additional court costs (salaries of additional judges and court facilities).
- The avalanche of securities litigation unleashed by this measure would destroy the business climate in California - driving jobs and investment out of the state. Companies could no longer indemnify their officers and directors, thereby exposing them to personal financial ruin.
- The measures encourages lawyers to drag in as many "deep pocket" co-defendants as possible; contains no protections against abusive litigation practices, such as the use of "professional plaintiffs."
- It prohibits future restrictions on attorney contingency fee arrangements.

Opposition arguments signed by: Larry McCarthy, California Taxpayers' Association; Martyn B. Hopper, National Federation of Independent Business/California; Kirk West, California Chamber of Commerce; Gordon Jones, The Seniors Coalition; Mary George, Hispanic Women's Council, and Steven J. Tedesco, San Jose Metropolitan Chamber of Commerce.

Proposition 212

Campaign Contributions and Spending Limits. Repeals Gift and Honoria Limits. Restricts Lobbyists.

Initiative Statute

Sponsor: California Public Interest Research Group (CALPIRG)

Major Provisions:

- Repeals existing law that limits or prohibits gifts and speaking or appearance fees (honoraria) received by public officials.
- Limits the amount of contributions that individuals, political parties and "citizen contribution committees" (defined as groups of 25 or more, contributing no more than $25 per member) can make to candidates for public office. Prohibits direct contributions from business, labor and nonprofit organizations. Such organizations can, however, create political action committees (PACs) for the purpose of supporting candidates.
- Imposes mandatory and voluntary limits on campaign spending.
- Limits time for fundraising.
- Prohibits tax deductions for lobbying expenses. Prohibits lobbyists from making or arranging contributions to officials whom they lobby.
- Increases penalties for existing campaign law violations.
- Provides that if this measure is approved by more votes than Proposition 208, this measure will supersede. If Proposition 208 is approved with more votes, the provisions of this measure not in conflict with 208 will take effect.

Background:

Federal law places limits on campaign contributions for individuals and groups. California, generally, has no similar restrictions, although some localities have imposed limits. Similarly, current state law places no restrictions on candidate spending from personal sources, including personal loans, nor does it restrict campaign expenditures from campaign committees.

Efforts to impose limits on contributions and/or spending (Propositions 68 and 73) have been blocked by the courts.

Proposition 112 restricts or bans gifts, honoraria and travel payments to state elected officials.

Fiscal Impact:

Elimination of tax deductions for lobbying expenses would generate about $6 million annually in state revenues. The Legislative Analyst projects administrative costs of up to $4 million per year and additional, but insignificant, state and local election costs.

Support Arguments:

- Proposition 212 will break special interest control.
- The measure makes politicians accountable to all voters, not special interests.
- The measure sets real contribution limits, unlike its rival measure, Proposition 208.

Support arguments signed by: Wendy Wendlandt and Ed Maschke of CALPIRG; Don Vial, former state Fair Political Practices commissioner; Bob Benson, professor of law; former Governor Jerry Brown, and Daniel A. Terry, California Professional Firefighters

Opposition Arguments:

- Proposition 212 legalizes unlimited cash gifts to elected officials.
- The measure contains a special-interest loophole which allows PACS to give candidates 100 times what anyone else can give.
- The measure is foolishly unconstitutional and will never be implemented.

Opposition arguments signed by: Jacqueline Antee, American Association of Retired Persons; Fran Packard, League of Women Voters; Michael Gunn, California Campaign Finance Reform Task Force of United We Stand America, and Tony Miller, Californians for Political Reform.

Proposition 213

Limitation on Recovery to Felons, Uninsured Motorists, Drunk Drivers.

Initiative Statute

Sponsor: Insurance Commissioner Chuck Quackenbush

Major Provisions:

- Denies all recovery of damages to convicted felons whose injuries were caused during the commission of a crime or flight therefrom.
- Denies recovery of pain and suffering claims (noneconomic losses) to drunken drivers and uninsured motorists.
- Allows injured uninsured motorists to claim damages against drunken drivers.

Background:

Currently, a person who is injured while breaking the law may recover losses resulting from the injury. One school district had to pay more than $1 million to a burglar who fell through a skylight on the roof of the building he was attempting to enter illegally.

Fiscal Impact:

According to the Legislative Analyst, the state could experience less than $5 million-a-year revenue loss due to a reduction in taxable insurance premiums. This would be the outcome if the restrictions on uninsured motorists and drunk drivers resulted in lower cost for auto insurance. The denial of the right to recover losses in Proposition 213 could result in reduced annual court-related costs to state and local governments and fewer lawsuits filed against state and local governments with resulting unknown savings.

Support Arguments:

- Proposition 213 will fix a system that rewards people who break the law.

- The measure says "no" to uninsured drivers by saying "no" to huge monetary awards for "pain and suffering."
- Proposition 213 takes the profit out of crime by closing a legal loophole that allows convicted felons to sue for injuries incurred while running from their crime.

Support arguments signed by: Linda Oxenreider, Mothers Against Drunk Driving; Chuck Quackenbush, insurance commissioner; D.O. "Spike" Helmick, California Highway Patrol commissioner; Ronald E. Lowenberg, California Police Chiefs' Association; Jan Miller, Doris Tate Crime Victims Bureau, and Steven H. Craig, Peace Officers Research Association of California.

Opposition Arguments:

- Proposition 213 allows insurance companies to take $327 million more every year out of our pockets.
- Proposition 213 is "No-Fault" for reckless drivers.
- There is nothing in this measure that says Californians will see their insurance rates go down.

Opposition arguments signed by: Harvey Rosenfield, Proposition 103 Enforcement Project; Ken McEldowney, Consumer Action; Ina Delong, United Policyholders, and Roy Ulrich, campaign finance reform advocate.

Proposition 214

Health Care Businesses. Regulation. Consumer Protection.

Initiative Statute

Sponsor: Service Employees International Union and Neighbor to Neighbor

Major Provisions:

- Forbids any health care business from prohibiting any licensed or certified caregiver from disclosing to a patient any information the caregiver determines to be relevant to the patient's health care.
- Prohibits retaliation against any health care provider for advocating for safe, adequate and appropriate care for patients in any private or public setting.
- Provides that caregivers, including physicians, nurses and others could only be discharged for "just cause."
- Prohibits payment of any financial incentive for the denial, withholding, or delay of medically appropriate care.
- Requires health plans to have written criteria developed by physicians, nurses or other licensed health professionals for denying payment for care.
- Requires a physical examination by a licensed professional of appropriate training and experience before a health care business may deny care to a patient.
- Mandates that people employed by health plans who are responsible for determining what care may be provided are subject to the same standards and disciplinary procedures as caregivers providing direct patient care.

- Requires that all health facilities maintain minimum safe and adequate staffing levels of physicians, nurses and other licensed caregivers as established by the Department of Health Services and the Department of Corporations based upon illness severity, recovery quality and other patient needs.
- Requires that all health care businesses annually file with the state a variety of financial, quality, staffing and business information and makes this information public. Additionally, health insurers are required to disclose the amount spent on administrative costs.
- Provides the right for private citizens to file lawsuits to enforce the initiative's provisions.
- Applies the provisions of this measure to workers' compensation, disability, and other types of insurance by broadly applying its terms to any organization of any kind that provides health services, defined as health care services of any kind.
- The initiative may not be amended except by another vote of the public or by a law passed by a vote of the Legislature to "further its purposes."

Background:

As indicated in the summary on the California Nurses Association (CNA) initiative proposal (Proposition 216), this measure is nearly identical to the other proposal. Three key differences are that Proposition 214 does not contain the direct taxation provisions of the CNA measure, it does not create the Consumer Association, and it explicitly repeals the doctrine of "at will" employment for health care workers.

Fiscal Impact:

The Legislative Analyst and Director of the Department of Finance estimate the following fiscal impact on state and local government:

- Unknown direct and indirect costs to state and local governments of potentially $10 million to several hundreds of millions of dollars.

According to research done by the opponents of Proposition 214, the measure could have the following impacts on private sector costs:

- Preliminary estimates on the impact on health insurance premiums range from an increase of 10 - 15% to an increase of 30% or more.
- The increase in staffing costs is estimated at up to $345 million per year.
- The measure could also result in higher costs of hundreds of millions of dollars annually to the state and local governments as providers of health care, primarily due to the provisions affecting staffing.
- To the extent that this measure increases costs for health care delivery in the private sector, it could also result in indirect but significant costs to state and local governments which provide health care for employees.
- Preliminary estimates of workers' compensation impact is a 10% increase in costs ($700 million).
- The abolishment of "at will" employment will add unknown, but significant costs to health care entities.

Support Arguments:

- The health care industry is changing rapidly, and some of those changes are dangerous to your health.
- This measure would preserve patient rights by preventing HMOs from establishing rules that save them money but endanger your health. It prohibits rules that urge doctors to deny important care or to withhold

important information about your health.
- This law would be administered by existing agencies, minimizing enforcement costs.

Support arguments signed by: Mary Tucker, American Association of Retired Persons; Lois Salisbury, Children Now; Laura Remson Mitchell, National Multiple Sclerosis Society, California Chapters; Robyn Wagner Holtz, The Susan G. Komen Breast Cancer Foundation; W.E. (Gene) Giberson, Alzheimers Association, California Council; Jonathan Shestack, Cure Autism Now.

Opposition Arguments:

- Proposition 214 would increase costs by hundreds of millions of dollars, leading to cuts in other services or tax increases.
- Existing law already provides many of the protections this measure claims to enact. Its real purpose is to establish special interest job protection, staffing ratios, and other rules to benefit the union that sponsored it.
- This measure does nothing to make insurance more affordable, and would even increase the number of uninsured because it will increase insurance costs as much as 15%. These increased costs will hurt small businesses most.

Opposition arguments signed by: Sister Carol Padilla, Daughter of Charity; Dr. Richard Gordinier; Kirk West, California Chamber of Commerce; Gordon Jones, The Seniors Coalition; Mary Dee Hacker, Childrens Hospital, Los Angeles.

Proposition 215

Medical Use of Marijuana.

Initiative Statute.

Sponsor: Californians for Medical Rights

Major Provisions:

- Makes marijuana use legal for prescribed medical treatment.
- Provides legal cover for doctors who prescribe marijuana for medical treatment purposes.

Background:

A number of other states have decriminalized marijuana for medical treatment of various diseases, including cancer and AIDS. In California, the City of San Francisco has fostered the sale of marijuana for the same purposes. Past legislation that would make the substance available for medical use has been unsuccessful.

Fiscal Impact:

According to the Legislative Analyst, Proposition 215 would probably have no significant fiscal impact on state and local governments.

Support Arguments:

- Proposition 215 will allow seriously ill and terminally ill patients to legally use marijuana, if, and only if, they have the approval of a licensed physician.
- Marijuana doesn't help just cancer patients. It is also effective for patients with glaucoma, AIDS, multiple sclerosis, epilepsy, and spinal cord injuries.
- Marijuana often eases the nausea patients experience from chemotherapy.

Support arguments signed by: Richard J. Cohen, M.D., California-Pacific Medical Center; Ivan Silverberg, M.D.; Anna T. Boyce, registered nurse; Terence Hallinan, San Francisco district attorney; Assemblymember John Vasconcellos; James Canter, cancer survivor.

Opposition Arguments:

- The American Cancer Society says that smoking marijuana may be more cancer-causing than tobacco.
- Smoking marijuana is not approved by the U.S. Food and Drug Administration for any illness.
- Proposition 215 is marijuana legalization - not medicine.

Opposition arguments signed by: James P. Fox, California District Attorneys Association; Michael J. Meyers, Brotman Medical Center; Sharon Rose, Californians for Drug-Free Youth, Inc.; Brad Gates, California State Sheriffs' Association; Eric A. Voth, The International Drug Strategy Institute; Glenn Levant, D.A.R.E. America.

Proposition 216

Health Care. Regulation. Consumer Protection.

Initiative Statute

Sponsor: California Nurses Association (CNA) and Harvey Rosenfield, head of the Foundation for Taxpayer and Consumer Rights

Major Provisions:

- Forbids any health care business from prohibiting any licensed or certified caregiver from disclosing to a patient any information the caregiver determines to be relevant to the patient's health care.
- Prohibits retaliation against any health care provider for advocating for safe, adequate and appropriate care for patients in any private or public setting.
- Prohibits payment of any financial incentive for the denial, withholding, or delay of medically appropriate care, but does not prohibit a health care business from using pre-paid, per-capita rates.
- Requires health plans to have written criteria developed by physicians, nurses or other licensed health professionals for denying payment for care.

- Requires a physical examination by a licensed professional of appropriate training and experience before a health care business may deny care to a patient.
- Mandates that people employed by health plans who are responsible for determining what care may be provided are subject to the same standards and disciplinary procedures as caregivers providing direct patient care.
- Establishes minimum staffing standards by requiring that the state Department of Health Services determine the numbers and classifications of licensed or certified caregivers for all health facilities and requires that caregivers maintain all requirements of professional licensing and certification standards.
- Requires that all health care businesses annually file with the state a variety of financial, quality, staffing and business information and makes this information public.
- Creates the Health Care Consumer Association as a non-profit corporation to issue reports, advocate legislation, advise existing agencies and intervene or initiate legal proceedings to implement or enforce the initiative. The organization would be funded by contributions from the public, who would be invited to join the group through membership notices required to be inserted in insurance mailings.
- Provides that health insurance premiums, co-payments, deductibles or charges for health services shall not be increased unless the health care business has first certified to the Department of Health Services under penalty of perjury that the increase is necessary. Consumers could challenge increases in court.
- Institutes a number of new taxes including:
  - A 1% tax on a health care business that reorganizes, downsizes or closes;
  - A 10% tax on non-profit health care businesses that convert to for-profit status;
  - A tax of 2.5% on stock or compensation worth more than $2 million given to executives (or their families) of health care businesses;
  - A 1% tax on the assets of a health care business that acquires or merges with another entity;
  - A 3% tax on total gross revenues of a multi-provider network that acquires or merges with another entity. This tax shall be paid for five consecutive years.
- Allocates the revenue from the above taxes to a new special fund to pay for the administration of the initiative, community public health services such as trauma care and communicable disease control and prevention services, services for seniors, and care for people who have lost health benefits due to job loss or a decision by an employer to curtail benefits or coverage.
- Provides the right for private citizens to file lawsuits to enforce the initiative's provisions. Prohibits mandatory arbitration and ensures the right of a patient to sue in disputes over quality of care.
- Applies the provisions of this measure to workers' compensation, disability, and other types of insurance by broadly applying its terms to any organization of any kind that provides health services, defined as health care services of any kind.
- The initiative may not be amended except by another vote of the public or by a law passed by a two-thirds vote of the Legislature to "further its purposes."

Background:

Proposition 216 is similar to Proposition 214 sponsored by the Service Employees International Union (SEIU). CNA is the labor organization that represents many registered nurses in the state, while SEIU represents other classes of health care workers. For the past several years, CNA and SEIU have collaborated on strategies to publicly criticize health care providers and managed care organizations while advocating for provisions to increase health care staffing and give providers more control over coverage decisions. In 1994, CNA played a leading role in the qualification of Proposition 186, the "single payer" initiative that was rejected by a decisive 73% "no" vote. The 1996 measure contains a number of provisions that were advanced in Proposition 186, such as staffing requirements and regulatory oversight by a health care consumer board. Many provisions of the

CNA and SEIU measures are nearly identical. Both groups were collaborating on a single measure to advance to the 1996 ballot, but could not reach agreement on some key provisions, particularly the tax provisions of the CNA measure.

Fiscal Impact:

The Legislative Analyst and Director of the Department of Finance estimate the following fiscal impact on state and local government:

- The cost of this initiative could be hundreds of millions of dollars annually for state administration costs and certain health services. It could also result in revenue losses of tens of millions per year due to the tax-deductible business expenses of health care businesses.
- The measure could also result in higher costs of hundreds of millions of dollars annually to the state and local governments as providers of health care, primarily due to the provisions affecting staffing.
- To the extent that this measure increases costs for health care delivery in the private sector, it could also result in indirect but significant costs to state and local governments which provide health care for employees.

According to research done by the opponents of Proposition 216, estimates on the impact on health insurance premiums range from an increase of 10 - 15% to an increase of 30% or more. The increase in staffing costs is estimated at up to $345 million per year. Preliminary estimates of workers' compensation impact is a 10% increase in costs ($700 million).

Support Arguments:

- The move to managed care has sacrificed patient care in order to maximize HMO profits. Providers can get paid more by HMOs in the form of bonuses if they minimize care to patients. That's not only unethical; it puts lives at risk.
- Medical decisions should be made by physicians and other caregivers, not insurance executives who are acting to protect a bottom line. Proposition 216 would put patients, doctors and nurses back in control of health care.
- Managed care organizations have made billions of dollars by scrimping on care for patients. They pay their executives huge salaries.

Support arguments signed by: Ralph Nader, consumer advocate; Dr. Helen Rodriguez-Trias, American Public Health Association; Kit Costello, California Nurses Association; Harvey Rosenfeld, Foundation for Taxpayer and Consumer Rights; Dr. Sheldon Margen, University of California Wellness Newsletter; Linda Ross, California Committee of Small Business Owners.

Opposition Arguments:

- The cost of this measure will be massive - costing billions of dollars per year. It will mean significantly higher costs for virtually every taxpayer, local government entity, business and non-profit group in the state.
- The real motivation for this measure is providing job protection for its special interest sponsors. What the proponents really want to accomplish is to guarantee high staffing levels so that their members will have jobs.

- Passage of this measure will have the perverse impact of resulting in less health care coverage for Californians. As costs go up significantly, fewer businesses will provide coverage and many that do will be forced to cut benefits.

Opposition arguments signed by: Sister Krista Ramirez, Sisters of Mercy; Dr. William Weil, Cedars Sinai Health Associates; Sally Pipes, Pacific Research Institute of Public Policy; Sister Carol Padilla, Daughter of Charity; Gordon Jones, The Seniors Coalition.

Proposition 217

(For a more complete analysis of Proposition 217, see the September 15, 1996 Cal-Tax Ballot Brief)

Top Income Tax Brackets. Reinstatement. Revenues to Local Agencies.

Initiative Statute

Sponsor: California Tax Reform Association

Major Provisions:

- Retroactively imposes a 10% personal income tax rate for California taxpayers with taxable income over \$111,695 and an 11% rate for taxable income over \$223,390, effective January 1, 1996. (Joint filers would pay at incomes over \$223,390 and \$446,780, respectively.)
- Approximately half of the increased revenue would be allocated to schools through the Proposition 98 guarantee; the remainder would be allocated to local governments based on their proportionate share of property tax revenue being transferred to local schools and community colleges since 1992 and 1993 law changes.
- Would prohibit any reduction in a local agency's proportionate share of property tax, without respect to future growth patterns.
- Future changes in rate base or burden of state personal income tax would need to maintain, as a minimum, the dollar amount and proportion of income tax paid by taxpayers in the new 10% and 11% brackets.

Background:

At 9.3%, California's top personal income marginal tax rate bracket is among the highest in the nation.

In 1991, as part of a budget-balancing compromise between Governor Pete Wilson and the Legislature, the 10% and 11% brackets were temporarily added. They were in effect through 1995, when they automatically expired. In the past two-year session of the Legislature, efforts to make the higher brackets permanent were unsuccessful. Also defeated was Governor Wilson's proposal to phase the rates back down to 9.3% - a 15% reduction - over three years, along with the same reduction in all other rates.

Lenny Goldberg, executive director of the California Tax Reform Association, authored Proposition 217 to retroactively and permanently impose the 10% and 11% rates. It is his second major tax-hike initiative in four years. Voters in 1992 soundly rejected his Proposition 167, a $5-billion increase in taxes on businesses.

California's current six-bracket structure is designed to tax people with more income at higher rates because of their greater ability to pay. Each additional increment of income is subject to a higher tax rate, and these increments are called brackets.

Under California's extremely progressive system, the top 10% of income earners pay 67% of the income tax and the top 1% pay 31% of the total tax.

Fiscal Impact:

Taxpayers: The Legislative Analyst estimates that this proposition would increase taxes approximately $700 million annually. This estimate is based on a static estimate that assumes no changes in taxpayer behavior to minimize the additional taxes the proposition would impose.

Schools: The Legislative Analyst estimates that approximately one-half of the increased revenue generated by the higher tax rates would go to schools. There are no provisions providing how the money is to be spent.

It is likely that not all school districts would receive new revenue under this proposition. There are about 50 "basic aid" school districts, that do not receive more than a constitutional fixed amount of state revenue due to a Supreme Court decision (in the Serrano case) requiring the state to equalize the spending of school districts.

Cities, Counties and Special Districts: These local agencies would receive any remaining new tax revenues, allocated based on the property tax shift formula.

Support Arguments:

- Sacramento politicians shifted property tax away from local governments, and this would help locals recover from those shifts.
- This shouldn't be considered a tax increase, because it continues a temporary tax.
- This only affects the wealthiest 1.2% of taxpayers, who should pay more rather than "ordinary taxpayers."
- It would provide money for schools.

Support arguments signed by: Fran Packard, League of Women Voters; Mary Bergan, California Federation of Teachers; Daniel Terry, California Professional Firefighters; Steven Craig, Peace Officers Research Association of California; Carol Ruley, California State Parent Teacher Association; Lenny Goldberg, California Tax Reform Association.

Opposition Arguments:

- This would be a retroactive tax increase and California would have the highest effective income tax rate in the country, harming the economic recovery.
- It would hurt small businesses, because many taxpayers in these upper brackets are small business owners.
- This measure messes up property taxes, penalizing growing cities or causing double taxation on residents

of new cities.
- There is no guarantee how the money would be spent.

Opposition arguments signed by: Larry McCarthy, California Taxpayers Association; Ruth Lunquist, small business owner; Martyn Hopper, National Federation of Independent Business; Kevin Wright Carney, school board member, Antelope Valley Union High School District; John Neal, California Chamber of Commerce Small Business Committee; Lake Forest Mayor Richard Dixon.

Proposition 218

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

Initiative Constitutional Amendment

Sponsor: Howard Jarvis Taxpayers Association, Paul Gann's Citizens Committee, and Alliance of California Taxpayers and Involved Voters

Major Provisions:

- Finds and declares that taxes should not be imposed on Californians without their consent and that, in order to protect from unreasonable tax increases, limitations should be placed on the methods by which local governments exact revenue.
- Requires majority voter approval for all local general taxes. Because this is a constitutional amendment, that requirement would clearly apply to charter cities.
- Defines a general tax as any tax imposed for general governmental purposes.
- Requires two-thirds voter approval for all local special taxes.
- Defines a special tax as any tax imposed for specific purposes, even if placed into a general fund.
- Requires voter approval of existing local taxes enacted after January 1, 1995.
- Provides that the initiative power shall not be restricted with respect to reducing or repealing local taxes, assessments or fees.
- Requires majority property owner approval, by mail-in ballot, of benefit assessments. Votes would be weighted by the financial obligation each property would incur if the assessment were to pass.
- Specifies that government-owned property is not exempt from benefit assessments, unless an agency can show that it receives no special benefit.
- Prohibits property-related fees from exceeding costs of service provided. Except for fees for sewer, water and refuse collection services, property-related fees would require either majority approval of the fee payers or two-thirds approval of voters.

Background:

The measure seeks to address two main concerns: reinforcing voter approval requirements for local taxes and controlling the growth of surrogates for property taxes.

In 1986, voters approved Proposition 62 by a 58% margin. Proposition 62 required majority voter approval of local general taxes and two-thirds voter approval of local special taxes. The special tax provision was not controversial, because it largely restated current constitutional law enacted in Proposition 13. The general tax provision, however, underwent considerable legal scrutiny.

At the time this initiative was drafted, Proposition 62's general tax vote requirement was considered invalid, because appeals courts had labeled it unconstitutional. Since then, the state Supreme Court has reinstated Proposition 62's vote requirement on general taxes (Santa Clara County Local Transportation Authority v. Guardino), but many believe it does not apply to charter cities, since Proposition 62 was only a statute, not a constitutional amendment. This measure would apply to charter cities, because it is a constitutional amendment.

Since Proposition 13 was passed in 1978, local governments have increasingly turned to surrogate financing mechanisms to extract revenue from property. Benefit assessments, also called special assessments, are the most prominent property-related surrogate.

Assessments are not considered by the courts to be taxes. They are treated more like fees, since they are assumed to relate closely to benefit received from a specific government project or service. Because they are not considered taxes, local governments have been able to increase assessments without voter approval. The resulting growth in assessment revenues has been tremendous. Although growth has been high, assessments are still a small portion of local government budgets.

Benefit assessments are applied on a per-parcel basis, but the amounts levied can vary by many factors except for the value of the property. Although not allowed to be based on property value, many potential factors approach an ad valorem basis in practice. For example, assessments can vary by lot size, type of property use, square footage of buildings on the property, size of lot frontage to a street, proximity of the property to a project funded by the revenues, etc.

In theory, the amount of the assessment must bear some relationship to the amount of benefit a property owner receives from the funded project or service. However, in 1991, the state Supreme Court significantly loosened that requirement by declaring that "indirect" benefits are assessable, and a local government's determination of benefit will usually be assumed correct, unless very unusual circumstances exist, such as fraud on the part of the jurisdiction (Knox v. Orland). That decision has led to an increase in the use of benefit assessments as local governments have assessed more owners for projects that only indirectly or theoretically benefit them.

Because assessments can vary by so many factors, some have called the use of benefit assessments a "de facto split roll." Often business property is assessed a much greater amount than residential property. For example, a proposed assessment in the City of Sacramento which would have funded police services was to charge $25 per parcel for single-family homes and up to $2,000 per parcel for retail stores or warehouses. Many times these assessment proportions do not seem related to benefit as much as they are related to political expediency and revenue-raising capacity.

Fiscal Impact:

The Legislative Analyst's Office has estimated these impacts:

State Government: Potential costs of tens of millions annually to pay assessments on state or school property that is in local assessment districts.

Local Government: Revenue losses potentially exceeding $100 million annually, due to restrictions on local taxes, fees and assessments. If voters do not ratify existing taxes that must be placed on ballots, additional existing revenue could be reduced. Future revenue growth is likely to be lower by requiring voter approval. Local costs could increase several millions of dollars to review existing taxes and assessments and place them on ballots.

Following are Cal-Tax comments on fiscal impact:

Taxpayers: Potential tax savings exceeding $100 million annually, because voters may repeal some existing taxes or defeat future tax and assessment proposals. Some individual business and residential taxpayers would experience significant savings because the measure would require more stringent determination of benefit before assessments may be levied. This could lead to more equitable assessments when taxpayers do not derive much benefit from a specific project.

Support Arguments:

- Proposition 218 guarantees the right to vote on taxes, even when they are called something else, like assessments. It does not prevent raising money for vital services - it merely requires voter approval to do so.
- Politicians opened a loophole in Proposition 13, allowing expansion of benefit assessments which have grown by huge percentages since then.
- Local governments have abused their authority and created strange new taxes, like the beachfront assessment that charged more if you had a good view of the ocean.

Support arguments signed by: Joel Fox, Howard Jarvis Taxpayers Association; Jim Conran, Consumers First; Richard Gann, Paul Gann's Citizens Committee; Carol Ross Evans, California Taxpayers' Association; Felicia Elkinson, Council of Sacramento Senior Organizations; Lee Phelps, Alliance of California Taxpayers and Involved Voters.

Opposition Arguments:

- Funding would be cut off for vital services like police, fire, and schools.
- Schools would have to pay new "taxes" on their property, reducing funds for education.
- Non-citizens and corporations would get voting rights on assessments and businesses could have greater voting power than homeowners.

Opposition arguments signed by: Fran Packard, League of Women Voters of California; Chief Ron Lowenberg, California Police Chiefs' Association; Chief Jeff Bowman, California Fire Chiefs' Association; Howard Owens, Congress of California Seniors; Lois Tinson, California Teachers Association; Ron Snider, California Association of Highway Patrolmen.

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INSIDE TAXES COMMENTARY -- November 15, 1996

Election message: Yes on the economy and jobs; no on taxes!

By Larry McCarthy

The message is loud and clear: California voters cast their ballots for a stronger economy and more jobs, and against higher taxes.

Of the dozen November 5 statewide ballot propositions that resulted from initiative petitions, half were labeled "job killers" by their opponents, a coalition of business and taxpayer groups. All but one was rejected.

According to a study by Spectrum Economics of Palo Alto, job losses from the initiatives could have ranged up to 664,000. The cumulative impact of the six ranged up to $11 billion a year -- the equivalent of more than doubling the state corporate income tax.

Proposition 217, the $700-million-a-year tax hike, was one of the job killers. It sought to retroactively and permanently raise taxes by restoring 10% and 11% top brackets for state income taxes, then tried to pass it off as just a little tax bite for the wealthy, who would hardly feel it.

Not so. Two-thirds of those who would file under those higher brackets have business income. They are small businesses, the job-providing investors in the state's economy.

For some, the 217 proponents' media blitz weeks before the general election was a catalyst for action. After listening to a radio spot promoting the tax-hike initiative, Howard "Ted" Greene, founder and chairman of Amylin Pharmaceuticals, Inc., in San Diego called offices of the California Taxpayers' Association, asking Cal-Tax how he could help defeat the measure.

"Prop. 217 just corks it for me," Greene said. "In five years, when my children are out of high school, I'm out of here." He said he would seek a state with a more hospitable business climate. He said his accountant told him he wasn't alone; that other clients were on the brink of fleeing California's ultra-progressive tax structure (even without Proposition 217, the top 10% of the taxpayers are paying two-thirds of the income tax collected in California).

He acknowledged that he could afford to pay a higher tax bill, but that was not the point. It was a matter of principle.

"If people of this state vote to penalize success, then I don't want to be here," he said.

A vote for 217, Greene said, was a "clear message to California's most successful citizens" that they should "take your money and your expertise to Seattle, Austin, or Fort Lauderdale." States of Washington, Texas and Florida do not have a personal income tax. He also listed a dozen states with marginal tax rates below those of California.

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It also is significant for the future of the state's economy that other job-killer initiatives were defeated, including schemes to regulate health care (Props. 214 and 216), and to line the pockets of trial lawyers, including those who specialize in hit-and-run lawsuits against companies whose stock fluctuates in the volatile high-tech marketplace (Props. 207 and 211). Voters also lashed out against local governments that have raised taxes (sometimes disguised as fees) without putting the questions to voters, passing the Right to Vote on Taxes Act (Prop. 218).

California's economy dodged bullets fired by the so-called spending lobby and other interests on November 5. Pro-tax advocates of these schemes, including state and local government employee unions, trial lawyers, the teachers' association, and local government officials, should see this message from the electorate:

We want more jobs, not more taxes.

-- Larry McCarthy is president of the California Taxpayers' Association (Cal-Tax).

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WATER RATES UNDER PROPOSITION 218

By Jonathan M. Coupal and Jack Cohen 1/

The September 1997 issue of *Debt Line* reported on an Attorney General opinion which concluded that water service was *not* "property related" for purposes of Article XIIID of the California Constitution (Proposition 218). 2/ Such an interpretation, if adopted by the courts, would permit local governments to impose water rates in a manner that deviates from the important "costs of service" requirements mandated by the new law, as well as depriving California taxpayers of significant procedural protections.

In light of the importance of this issue, the drafters and sponsors of Proposition 218 desire to set the record straight as to what they believe the proper (and only) interpretation of Proposition 218 is with respect to Proposition 218's applicability to water rates.

The opinion of the Attorney General was in response to an inquiry from Senator Richard Rainey regarding "tiered" water rates. Such rates typically assess higher charges per unit of water as the level of consumption increases. Although tiered water rates conceivably could reflect the actual "cost of service" for water users, such a rate structure is usually imposed for the purpose of encouraging conservation, and thus deviates from "cost of service" requirements under Article XIIID.

The opinion contained little actual analysis of tiered rates and, what little analysis was presented, was flawed. For example, the opinion set forth a substantial discussion of various "rules of construction" applicable to the interpretation of initiatives. Yet, the opinion failed to mention or follow Proposition 218's very specific liberal construction provision which constitutionally mandates that the provisions of the act "shall be liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent." (Section 5 of the Right to Vote on Taxes Act.)

Contrary to the opinion of the Attorney General, the express language of Proposition 218 subjects water rates to the procedural and substantive requirements of the new law. Under Article XIIID, the terms "fee" and "charge" are defined broadly as "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 a user fee or charge for a property related service." (Cal. Const., art. XIIID, sec. 2, subd. (e).)

A. Meaning of "Incident of Property Ownership"

Any fee or charge imposed by a local agency upon a person as an "incident of property ownership" is subject to Article XIIID unless expressly exempt therefrom under Proposition 218. The opinion of the Attorney General construes the phrase "incident of property ownership" as something that is *dependent* upon property ownership. However, this interpretation is inconsistent with the way the term "incident of property ownership" has been used and understood under California law.

For example, excise taxes are imposed on the exercise of one of the incidents of property ownership, such as the ability to transfer or devise property or the ability to use, store, or consume it. *City of Oakland v. Digre* (1988) 205 Cal.App.3d 99, 106.) An excise tax is a tax whose imposition is triggered not by ownership but instead by some particular use of the property or privilege associated with ownership. (*Thomas v. City of East Palo Alto* (1997) 53 Cal.App.4th 1084, 1089.) An excise tax generally is levied against an activity which can be foregone

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without loss of ownership. (*Digre, supra*, 205 Cal.App.3d at p. 109.) The target of an excise tax can always avoid taxation by not engaging in the privilege taxed. (Id.) An excise tax is imposed upon the person engaging in the privilege being tax, which can be the property's occupant rather than the property owner. (Cf. *City of Glendale v. Trondsen* (1957) 48 Cal.2d 93.)

Corpus Juris Secundum notes the following concerning what constitutes an "incident of ownership" for purposes of property generally:

"Ownership of property comprises numerous different attributes. The chief incidents of the ownership of property are the right to its possession, the right to its use, and the right to its enjoyment, according to the owner's taste and wishes, free from unreasonable interference, usually to the exclusion of others. . . . In addition, an incident of ownership is the right to exercise dominion over property, to change or improve the property, or to sell or otherwise dispose of it according to the will of the owner, and without any diminution or control except only by the laws of the land." (73 C.J.S., Property, Sec. 27, pp. 209-212.)

"Incidents of property ownership" include the sale, transfer, or rental of property, as well as the use of services. (*Thomas, supra*, 53 Cal.App.4th at p. 1088.) The development of property is also an "incident of property ownership" as an excise tax may be imposed on the privilege of developing property. (*Centex Real Estate Corp. v. City of Vallejo* (1993) 19 Cal.App.4th 1358, 1364.) 3/

Consistent with the above analysis and Section 5 of Proposition 218 which constitutionally mandates that its provisions be *liberally* construed, a fee or charge imposed upon a person as an "incident of property ownership" is a fee or charge associated with the exercise of one or more of the incidents of property ownership including, but not limited to, the use of property, rental of property, or the use of services related to the property.

Property-related fees or charges under Article XIIID are not based merely on the ownership of property, as that would be an unduly restrictive interpretation inviting easy circumvention, as well as being inconsistent with the way the term "incident of property ownership" has been used and understood under California law.

B. "User Fee or Charge for a Property-Related Service"

The above discussion of the phrase "incident of property ownership" is only half the analysis. The conclusion that water rates are governed by Article XIIID is further supported by the inclusion of "a user fee or charge for a property related service" within the scope of the "fee" or "charge" definition under Section 2 of Article XIIID.

A usage fee is typically charged "only to those who use goods or services. The amount of the charge is related to the actual goods or services provided to the payer. The usage fee for an ongoing service would normally be a monthly charge rather than a one-time charge." (*San Marcos Water Dist. v. San Marcos Unified School Dist.* (1986) 42 Cal.3d 154, 162.) Thus, a usage fee is triggered by the use of goods or services and not by the mere ownership of property. Such a fee is "voluntary" in the sense that it is the payer's solicitation and utilization of a service which triggers the charge. (*Id.* at p. 161.) This clearly indicates that the scope of the "fee" or "charge" definition in Section 2(e) applies to levies beyond those based merely on the ownership of property. This situation is analogous to and consistent with an excise tax whose imposition is triggered not by ownership but instead by some particular "incident of property ownership" such as the use of services. (See *Thomas, supra*, 53 Cal.App.4th at p. 1089.)

Under Section 2(e), in order for a user fee or charge to be subject to Article XIIID, it must be for a "property related service." In determining what constitutes a "property related service," the focus is on the nature of the *service* being provided and whether that service is sufficiently related to property. The focus is not on the nature or characteristics of the fee or charge, as the "user fee or charge" component of the definition addresses that issue.

A "property related service" is defined as "a public service having a direct relationship to property ownership." (Cal. Const., art. XIIID, sec. 2, subd. (h).) The definition specifically states that the public service for which the fee or charge is imposed must have a direct relationship to property ownership rather than being based on the mere ownership of property or imposed on a parcel basis.

Mindful of the constitutionally mandated Section 5 liberal interpretation provision which requires a liberal interpretation that effectuates the purposes of limiting local government revenue and enhancing taxpayer consent, a "property related service" must be broadly construed. The "ownership" of property is defined as the "right of one or more persons to possess and use it to the exclusion of others." (Civ. Code, sec. 654.) It is a "collection of rights to use and enjoy property." (Black's Law Dict. (6th ed. 1990) p. 1106, col. 2.) As further evidence that "property ownership" under Proposition 218 is broad in its scope, the term includes "tenancies of real property where tenants are directly liable to pay the assessment, fee, or charge in question." (Cal. Const., art. XIIID, sec. 2, subd. (g).)

Consistent with the Section 5 liberal interpretation provision and the foregoing definitions of "ownership," a user fee or charge for a "property related service" is a fee or charge for a public service that has a direct relationship to the use, possession, or enjoyment of property. Under the foregoing, water service is the quintessential property related service. Virtually all water service has meaning only in the context of the use and enjoyment of property. The opinion of the Attorney General abjectly fails to provide any analysis supporting a contrary conclusion.

C. Purpose of Levy, Not Form, Controls Analysis

In contrast to the opinion of the Attorney General, it is unlikely that any court would construe the provisions of Proposition 218 in a manner so clearly contrary to its stated intent. Indeed, with respect to revenue issues in particular, courts have repeatedly rejected efforts to circumvent provisions of law by simply manipulating the form of the levy. An excellent example was encountered by the Supreme Court in the *San Marcos* case (*San Marcos*, *supra*, 42 Cal.3d 154).

At issue in *San Marcos* was whether a utility fee for capital improvements was a special assessment from which public entities are exempt, or a user fee which public entities must pay. In resolving the issue, the Supreme Court established a "purpose" test which looks to the purpose of the fee rather than how the form of the fee is varied, a matter which can be easily manipulated. The Supreme Court noted:

"By placing the emphasis on the purpose of the charge, the courts in those cases created a rule which conforms to the policy behind the implied exemption for public entities, and avoids easy manipulation. . . . Under the rule we adopt, no matter how the *form* of the fee is varied (i.e., whether it is based on actual or anticipated use; whether a one-time fee or monthly fee; and whether charged to all property owners or only to users of the sewer system), the *purpose* of the fee will determine whether or not public entities are exempt from paying the fee." (Id. at p. 164.)

The Attorney General has previously followed the San Marcos "purpose" rule, and in doing so noted that it was not significant what the fees were called, upon whom they were imposed, or the basis upon which they were assessed. It was the use of the revenues that was the controlling factor. If the fees were to help pay for ongoing services provided, they were user charges. (See 71 Ops.Cal.Atty.Gen. 163, 165 (1988).)

Applying the San Marcos "purpose" rule in the context of a "user fee or charge for a property related service," which determines whether or not a levy is subject to Article XIIID, the purpose of the charge must be the controlling factor rather than the form of the charge, a factor which can be easily manipulated by local governments in an attempt to avoid the requirements of Article XIIID.

Thus, if the purpose of a fee or charge is to fund a service, then it should not matter how the form of that fee or charge is varied (e.g., whether it is based on actual or anticipated use; whether a one-time fee or monthly fee; whether it is based on a per parcel basis or some other basis; or whether charged to all property owners or only to users of the service). Consistent with the "purpose" rule articulated in the *San Marcos* case, if a fee or charge is for a property related service, then it is subject to the requirements of Article XIIID without regard to the form of the fee or charge, a matter which can be easily manipulated by local governments in an attempt to avoid the requirements of Proposition 218. 4/

D. Utility Services are "Property Related Services"

Mindful of the constitutionally mandated Section 5 liberal interpretation provision which requires a liberal interpretation that effectuates the purposes of limiting local government revenue and enhancing taxpayer consent, utility services are "property related services" under Article XIIID.

Section 6(c) of Article XIIID specifically exempts water, sewer, and refuse collection services only from the voter approval requirements of Article XIIID, but not from the other requirements of Article XIIID. (*Cal. Const.*, art. XIIID, sec. 6, subd. (c).) It has long been a rule of interpretation that "the exception of a particular thing from general words, proves that, in the opinion of the lawgiver, the thing excepted would be within the general clause had the exception not been made." (*Brown v. State of Maryland* (1827) 25 U.S. 419, 438.) This rule is applicable to the constitution as to other instruments. (Id.) Thus, water, sewer, refuse collection, and similar services are intended to be within the scope of Article XIIID as "property related services."

Proposition 218 also expressly exempts fees for the provision of electrical or gas service from not being deemed imposed as an incident of property ownership for purposes of Article XIIID. (Cal. Const., art. XIIID, sec. 3, subd. (b).) However, the scope of the exemption does not include other types of utility services such as water, drainage, sewer, or refuse collection. It is a settled rule of statutory construction that "where a statute provides a specific exemption to a general rule, other exceptions are necessarily excluded." *(Adams v. County of Sacramento* (1991) 235 Cal.App.3d 872, 880.) Had the drafters intended to expand the exemptions to include fees for water service, they would have done so expressly.

Furthermore, it has been stated by our courts that "land to which utility service cannot be extended . . . cannot be developed." *(L & M Professional Consultants, Inc. v. Ferreira* (1983) 146 Cal.App.3d 1038, 1048.) At issue in the *Ferreira* case was the constitutionality of two statutes (Civ. Code, sec. 1001, Code Civ. Proc., sec. 1245.325) which provide private condemnation authority to a property owner to acquire an appurtenant easement to provide utility service to the owner's property.

Section 1001 of the Civil Code specifically authorizes any owner of real property to "acquire by eminent domain an appurtenant easement to provide utility service to the owner's property." (Civ. Code, sec. 1001, subd. (b).) "Utility service" refers to "water, gas, electric, drainage, sewer, or telephone service." (Civ. Code, sec. 1001, subd. (a).) Section 1001 is designed to serve "the function of opening what would otherwise be landlocked property to enable its most beneficial use." (*Ferreira, supra*, 146 Cal.App.3d at p. 1048.) This clearly illustrates the "direct relationship" between utility service and property ownership (the use, possession, and enjoyment of property), thereby making utility service a "property related service" for purposes of Article XIIID of the Constitution.

Conclusion

It is the drafters' position, supported by the clear language of Proposition 218, the liberal construction provision, and the intent of the voters that fees and charges for water service are governed by Proposition 218. To the extent tiered water rates are imposed in a manner that deviates from "cost of service" requirements, those rates are in violation of Proposition 218. Local governments or special districts which do not abide by the requirements of the new constitutional language do so at the risk of litigation.

Footnotes

1/ Jonathan M. Coupal is the Director of Legal Affairs for the Howard Jarvis Taxpayers Association and principal drafter of Proposition 218. Jack Cohen is a Los Angeles attorney.

2/ Opinion of the Attorney General, No. 97-302. The opinion was authored by Anthony M. Summers, Deputy Attorney General.

3/ Unlike water service, however, there is an *expressed* exclusion from Proposition 218 applicability for fees or charges imposed as a condition of property development. *Cal.Const.* , article XIIID, Section 1(b).

4/ The form of a fee or charge subject to Article XIIID may have bearing on whether or not it is a *permissible* fee or charge under Section 6(b) of Article XIIID.

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July 1997

Guest Commentary

The New Tax Revolution ... Again

By Al Beltrami

Editor's Note: Mr. Beltrami wrote this commentary in reaction to the guest commentary by Dan Wall, a deputy director of the California State Association of Counties (CSAC), that was published in the March 1997 issue of Cal-Tax Digest. In his article, entitled "The New Tax Revolution," Mr. Wall said Proposition 218, the "right-to-vote-on-taxes" initiative, may prove to be the most revolutionary act in the state's history. He said it jeopardizes up to $300 million in county revenue, shifts decision-making powers to Sacramento and poses a direct threat to county supervisors' ability to balance their budgets and serve their constituents.

Al Beltrami is a consultant who represents the Mendocino County Employers Council. In his earlier life, he devoted nearly 40 years to public service, including work for three California counties. He was chief administrative officer of Mendocino County from 1965 to 1990; Stanislaus County chief executive officer from 1991 to 1993, and deputy director of Intergovernmental Affairs for Governor

I was struck by how familiar some of the rhetoric was, because I had been "guilty" of some of the same strongly and honestly felt concerns nearly 20 years ago. Instead of Proposition 218, my comments related to Proposition 13 in 1978 while I was the Mendocino County administrative officer.

When the Jarvis-Gann initiative, known as Proposition 13, proposed to limit property tax increases, many of us in local government believed it to be "the most revolutionary act in the history of California," as Mr. Wall described Proposition 218, which statewide voters approved in November 1996.

We were wrong then, and Mr. Wall is wrong now.

First, while the initiative process is flawed and needs modification, it still is the most creative method for direct popular involvement in the public process. Proposition 13 was passed when property taxes were escalating, especially for

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seniors on fixed incomes, and the Legislature and then-Governor Jerry Brown were sitting on a multi-billion-dollar state surplus. People waited for the Legislative process to solve the problem. And, guess what? It didn't. What a surprise.

Now we have Proposition 218 dealing with the same concepts. Since local governments are limited on property tax increases, they have creatively turned to fees, assessments and other taxes. These extractions have been the fastest growing local government revenues in recent years, because they are available.

Some of us were warning some years ago that such a shift to other revenue sources, without consulting with voters, would bring a popular reaction. We were correct, as Proposition 218 proves.

Now, after almost 40 years in public service, I find myself as a consultant, basically representing a new business organization called the Mendocino County Employers Council. Obviously, my perspective has changed with my new experience. After all, where we stand depends on where we sit. But what I have seen in 1996 and 1997 is that local voters in the North Coast region, at least, have supported by more than two-thirds votes *all* of the special district and other tax proposals required by Proposition 218. What this tells me is that when local governments have a good and logical case for revenue enhancement, and tell their story well, the citizen and taxpayer responds well.

It appears to me that some local government officials are protesting too much. They need to be taxpayer friendly. I know how hard that is for those who see themselves as the last resort for the poor, the mentally ill, county prisoners, public health recipients, county hospitals, etc. But let me tell you, the world out there is much bigger than those select constituencies.

One area of public relations concern for local government is the ongoing "chicken little" approach of some local leaders to blame "mandates" for all their fiscal woes. This argument loses credibility when systems are in place to answer any real unfunded mandate. I recommend you inform your members that the time has come to put the mandate shibboleth sword back in the scabbard.

Finally, I recommend that counties face the unpopular but real issue of Proposition 98. As long as the schools have carved out their automatic share of all state general fund revenue increases,

Pete Wilson from 1993 to 1995. Since 1996, he has served as the public member on the Commission on State Mandates.

by popular initiative, then counties, along with city and special district allies, will have to live with that reality or make a change.

Proposition 218 is a convenient straw man to battle, but let me tell you from the front lines, your enemies are not the voters or local business; they reside in Sacramento and in other established state priorities. From one who has "been there, done that," let me wish local government well in dealing with the tough decisions to be made.

And, I just looked outside. The sky is not falling.

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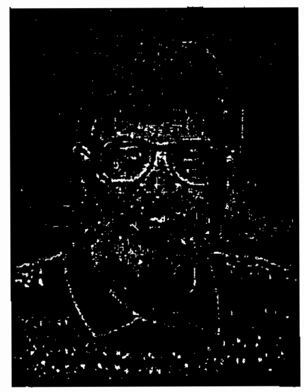
March 1997

Guest Commentary

The New Tax Revolution

By Dan Wall


Dan Wall, deputy director of the California State Association of Counties, wrote this article based on his remarks at the annual meeting of the California Taxpayers' Association on February 7, 1997. Mr. Wall, a former consultant to the Senate Finance Committee, specializes in issues of revenue, taxation and federal affairs.

In what may prove to be the most revolutionary act in the history of California, Proposition 218 was approved by a majority of voters last November. Apart from all the pseudo-populist rhetoric about benefits of "giving the voters control" over taxes, assessments and fees, this measure profoundly changes the way California is governed.

For the last 117 years, the California Constitution has provided for a representative democracy where a significant amount of authority to solve local problems is vested in counties, cities and the other branches of local government. The notion of "local control," which allows for decisions at the level of government closest to the people and to the issues, has been a cornerstone of our form of government. The same Constitution also provides for "checks and balances" to local control in the form of a Legislature which has the power to impose statewide policies and directives on local government.

A significant departure from a purely representative democracy was enacted 85 years ago in 1911 with the enactment of a constitutional amendment giving the voters the power of the initiative and referendum. Significantly, this movement toward direct democracy also contained "checks and balances" which prevented the referendum power from being used against "urgency statutes, statutes calling elections and statutes providing for tax levies or appropriations for the usual current expenses of the state." These four exceptions were made simply and appropriately to preserve the basic elements of a representative democracy. Without these exceptions, persons

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elected to county boards of supervisors, city councils and the Legislature would literally be unable to effectively discharge their constitutional duty to balance their budgets because at any time the voters could eliminate the very revenues which bring a budget into balance.

Our form of government is essentially a relatively deliberative, conservative mechanism which, at its heart, invests the power to cut or increase revenues and expenditures in our elected representatives. Therefore, if any elected official wants to make the "popular" decision to reduce revenues, he or she must also make the "unpopular" decision about which services will be cut. Conversely, if elected officials wish to enjoy the "pleasure" of increasing services, they must also suffer the "pain" of raising revenues.

Proposition 218 destroys this fundamental balance of power and responsibility which is at the core of our democracy. It allows for decisions on revenues to be made by the voters while at the same time relieving them of any responsibility over which services and programs must be reduced or eliminated. Conversely, it does not alter the responsibility of county supervisors and city council members to balance their budgets and make decisions on spending for local services. In short, the already difficult job of a locally elected official has been made nearly impossible and destined for failure.

If the voters of California truly want to scrap our representative democracy, then they must also be willing to assume responsibility over spending. Our form of government depends upon the continued linkage between power and responsibility and the involvement of its citizens in the political process. The basic question regarding revenues should always be: if I vote to reduce revenue, what services am I willing to reduce or eliminate? If these two decisions remain separated, it is likely that the future will only bring more frustration with "government."

In December, San Diego became California's first major city to have its credit rating lowered largely because of Proposition 218. When the city issued $67.6 million in bonds Dec. 12 for stadium improvements, Moody's and Standard & Poor's responded by dropping the city's stellar credit rating one level. It will cost San Diego an additional $600,000 in interest payments per $10 million of a 30-year obligation bond. Since then other municipalities have been similarly downgraded.

The key reason why the California State Association of Counties (CSAC) opposed Proposition 218 was **not** simply the fact that some $200 million to $300 million in county revenue would be placed in jeopardy. Instead, virtually every member of our board of directors saw this measure as a huge shift in decision-making power from counties to Sacramento, and because of that it posed a direct threat on their ability to fulfill their oath of office, balance their budgets and serve their constituents.

The following are key points on Proposition 218 from CSAC's perspective:

- **Loss of Local Control** - Counties are somewhat unique among local governments in that fully 95 percent of their spending is controlled by either federal or state law. Therefore, Proposition 218 eliminates the very limited ability that boards of supervisors had to raise revenues and balance their budgets.
- **Weighted Vote, Even for Non-Residents of the County** - Fees and assessments for necessary services such as fire, police, roads and lighting will be determined by small minorities of landowners who may not live in the county.
- **Allows for "Initiatives" to Reduce or Eliminate Taxes, Assessments and Fees** - If this provision is upheld by the courts, it will dramatically increase borrowing costs for counties and other local governments. As enacted, Proposition 218's "initiative" language undermines the security of the streams of revenues which are essentially the "collateral" used when counties borrow funds to meet cash-flow needs.
- **Substantial Increase in the Cost of Government** - Proposition 218 does a number of things that will substantially increase the cost of government: all levels of government will now be required to pay assessments and property related fees, new elections and new protest procedures are mandated, the burden of proof has been moved from the person protesting an assessment to the government imposing the assessment, and it mandates extensive engineering studies to estimate and verify special versus general benefits for assessments.

Editor's Note: The article reflects the views of the author and his organization. Cal-Tax supported Proposition 218.

Prop. 218 Howard Jarvis TAXPAYERS ASSOCIATION

Dedicated to protecting Proposition 13 and promoting taxpayers' rights.

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This article appeared in the October 20, 1996 *Los Angeles Times:*

Closing the Assessment Loophole in Proposition 13

By Joel Fox

Proposition 13 could be rendered meaningless if Proposition 218 fails at the polls.

Consider: Proposition 13 is a law designed chiefly to protect property taxpayers. It put limits on how high and how fast property taxes can climb and requires a vote of the people on new local taxes. After Prop 13's success, bureaucrats looked for ways to raise revenues while avoiding Prop 13's restrictions. They hit upon assessment districts, which were historically used to fund capital improvements that directly benefited property.

Over time, bureaucrats molded assessments into property taxes that avoid Proposition 13's restrictions. The courts supported this artistry by ignoring the historical precedent demanding a link between assessments and a direct benefit to property. They held that assessments could be used for operational budgets and maintenance costs and were not covered by Proposition 13's limits and vote requirements.

Assessments have become unrestricted property taxes. They appear on your property tax bill. There are no limits on how high assessments can go. There are no limits to how many assessments can be placed on your property. Indeed, one Northern California county redesigned its property tax bill to accommodate its growing list of assessments.

Because assessments can be imposed without a vote, they are attractive to local governments. Remember the debacle last spring when the Los Angeles Community College District tried to rush through landscaping improvements and construction of facilities such as an equestrian center with an assessment against property? Only after a massive outcry, including 30,000 protests, did district trustees agree to put the proposal on the Nov. 5 ballot. The current assessment system is stacked against taxpayers because an absolute majority of all properties within the assessment district is required to kill an assessment. In other words, those who do not protest are counted as "yes" votes. In the case of the community college district assessment, it would have taken 500,000 protests.

Proposition 218 would remedy this grossly unfair situation by giving the voters a more evenhanded say in the taxes levied upon them and their property.

Prop. 218 will continue Prop 13's legacy of protecting property owners from

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being the cash cow forced to fund most local services. As an example, recall the last two votes taken in the city of Los Angeles to raise taxes for police. Because these special taxes were to be paid exclusively by property owners, a two-thirds vote was required under Proposition 13. Both failed to achieve the two-thirds mark.

Proposition 218 once again limits the use of assessments to services which specifically benefit property. Police services are a general benefit to the community and should be funded by taxes, not assessments.

However, if Proposition 218 fails at the polls, look for city officials to try to impose a police assessment on property. Already, the City Council has asked city bureaucrats to look into the possibility of using assessments to fund police operations. If, as the old saying goes, the courts follow the election returns, its possible assessments for police will be upheld. The end result is that those same Los Angeles property taxpayers who were protected by Proposition 13's two-thirds vote requirement could assessments placed against their property with no vote at all.

Property taxes with no limits and no vote -- just like before Proposition 13 passed.

Opponents of Prop. 218 are falling back on the failed strategy of exaggerated predictions that we witnessed in the Proposition 13 campaign. They claim 218 would give new powers to foreign and big landowners, and fewer rights for renters. To the contrary, Proposition 218 follows the current law, which allows property owners to protest assessments, and creates no new powers expect for renters, who may vote on assessments for which they are liable.

The impartial legislative analyst says that potential revenue loss from Proposition 218 is minuscule -- a mere $100 million spread across the entire state or one-tenth or 1% of all government revenue in California. By contrast, the Los Angeles budget is about $12 billion; the city and L.A. school district budgets are in the $3-$4 billion range.

Under Proposition 218, government officials still will be able raise taxes -- if they convinces voters of the need for the increase. Assessments will pass with a majority vote of the property owners; general taxes with a majority of all voters.

Proposition 218 tackles the age-old question: Who should control the most important function of government, taxation? Those who think the safest place for this power is with the people will vote yes on Proposition 218.

There are 2 Associated Articles.

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- WATER RATES UNDER PROP. 218

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Special District fees and similar charges:

The California Supreme Court resuscitates stealth property taxes

By Theodore F. Bayer

California voters overwhelmingly passed Proposition 218, the 1996 initiative that was intended to prevent local government agencies from imposing real property-related taxes, fees and related charges without the approval of two-thirds of the electorate. The initiative was well-drafted and contained a clear statement of intent: no new taxes, fees or similar charges on California property unless expressly approved by a super-majority of the affected taxpayers. In a January 9, 2001, decision reminiscent of the Florida ballot debacle (Apartment Association of Los Angeles County, Inc. v. City of Los Angeles, 01 C.D.O.S. 209), the California Supreme Court reversed a lower court and, through a tortured analysis of the distinction between "on" and "of," upheld a $12 per unit fee imposed by the City of Los Angeles on residential apartment properties. You can almost hear the new fee legislation being drafted by the ninety California cities that urged the Court to uphold the fee!

Proposition 218 had as its genesis the grandfather of modern California property taxation, Proposition 13. A frequently-overlooked section of Proposition 13 prohibited local governments from enacting any special tax without a two-thirds vote of the electorate. Local government agencies methodically chipped away at the initiative, utilizing artificial court-created distinctions between "special" and "general" taxes, and between "taxes" and "fees." While Proposition 13 has limited annual increases in ad valorem taxes to two percent, by 1996, the number of local special districts imposing fees and assessments without the consent of the affected voters increased to over 5,000; and exactions imposed by those districts soared by over 2400%. In some cities, in fact, the amount of "special" taxes imposed annually on property owners almost equaled the amount of their

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"regular" assessments.

With no sign of relief from the legislature or the courts, Californians sought protection through the initiative process. The drafters of Proposition 218 understood the problem -- and the need for a well-crafted proposition. The results of their efforts appear to address squarely the issue: "[N]o 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 . . . as provided in this article [Footnote 1]." The initiative further defined an "agency" as any local or regional governmental entity. So how did the California Supreme Court, in a 5-2 opinion, manage to override the mandate of the voters and uphold a $12 per unit per year "inspection fee" imposed - without voter approval -- on owners of Los Angeles apartment buildings?

The Court first noted that the initiative applies to any levy upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for property-related service. But it then found that Proposition 218 only restricts fees imposed directly on property owners "in their capacity as such," and, therefore, since the inspection fee is not imposed solely because a person owns property but rather because the property is being rented, the fee is really more in the nature of a charge for a business license and therefore not subject to the constraints of the initiative. Got that? If an apartment building owner should stop renting the units, no fee would be payable; but so long as that activity continues, the fee is imposed on the business of property rental and thus not subject to Proposition 218.

Still confused? The Court attempted to clarify its position. Proposition 218 "did not refer to fees linked more indirectly to property ownership." Fees imposed on a parcel or a person as an incident of property ownership are subject to the initiative while fees imposed on an incident of property ownership are not within the ambit of Proposition 218. The business of renting apartments is an incident of owning an apartment building - "[O]ne can own apartments without renting them but no one can rent them without owning them!" Substitute "use" or "paint" or "develop" or "landscape" in place of "rent" and you begin to understand the clear impact of the Court's decision. Notably, the Court gave no examples of the type of exactions that would be imposed "as an incident of property ownership" and thus proscribed under the initiative.

By its decision, the Court has created a huge loophole that essentially guts Proposition 218. Local governments now have a template for the creation of new special districts and the imposition of new fees and charges. Enabling legislation will need to establish only that the proposed fee will have an "indirect" relationship to property ownership and that its imposition is not upon the property owner in its capacity as a property owner but rather in some other capacity. Since the owners of every commercial property, as well as every residential income property, wear multiple "hats," e.g., property owner, business owner, employer, special service user, the second requirement can be readily satisfied with respect to such properties. It will be a simple task for any local agency to establish that the affected charge has only an indirect relationship to property ownership, merely by ensuring that its imposition is against some non-protected "capacity."

Owners of business properties, in particular, should brace for an onslaught of new fees and charges. The Court's decision clearly upholds such exactions, and it will require some creativity - and audacity - on the part of local governments to formulate more than one hat for homeowners (who were the primary supporters of Proposition 218). In any event, this latest voter attempt to restrain the voracious appetite of local governments for revenue has been compromised. The dissenting opinion in Apartment Association of Los Angeles County, Inc. succinctly portrays this unfortunate saga:

"When the voters passed Proposition 13 . . ., they sought to restrict the ability of government to impose taxes and other charges on property owners without their approval. For almost two decades, however, they witnessed politicians evade this constitutional limitation. The message of Proposition 218 is that they meant what they said. With the majority 's turning a deaf ear to that message, we may well expect a future effort to 'stop politicians' end-runs around Proposition 13.'"

Given the track record to date, can Californians realistically expect a better fate for any "future effort?"

Theodore F. Bayer is a California attorney specializing in real estate and business transactions with an emphasis in real and personal property tax matters, commercial and industrial leasing, purchases and sales of businesses, commercial real estate purchases, sales and land use and development matters. Mr. Bayer is a founding partner in Pinnacle Law group, LLP., a San Francisco law firm that focuses on real estate and business transactions and litigation. He also is a principal in Ad Valorem

Solutions, LLC., a San Francisco based firm providing property tax consulting to owners of commercial and industrial properties. Mr. Bayer can be contacted at tbayer@pinnaclelawgroup.com.

Footnote 1 The only exceptions enumerated under Proposition 218 include (i) ad valorem property taxes, (ii) any special tax receiving a two-thirds vote, as provided under Proposition 13, (iii) assessments upon real property for a special benefit conferred upon that real property, as provided under Proposition 218, (iv) fees or charges for property-related services, as provided under Proposition 218 and (v) fees for the provision of electrical or gas service.

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DATED: Friday, October 09, 2009

Ford Greene