

ASSEMBLY BILL

No. 2257

Introduced by Assembly Member Wilson

February 8, 2024

An act to add Sections 53759.1 and 53759.2 to the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2257, as introduced, Wilson. Local government: property-related water and sewer fees and assessments: remedies.

The California Constitution specifies various requirements with respect to the levying of assessments and property-related fees and charges by a local agency. The California Constitution includes a public notice and a majority protest procedure in the case of assessments and procedures for submitting property-related fees and charges for approval by property owners subject to the fee or charge or to the electorate residing in the affected area following a public hearing.

Existing law, known as the Proposition 218 Omnibus Implementation Act, prescribes specific procedures and parameters for local jurisdictions to comply with these requirements.

This bill would prohibit, if a local agency complies with specified procedures, a person or entity from bringing a judicial action or proceeding alleging noncompliance with the constitutional provisions for any new, increased, or extended fee or assessment, as defined, unless that person or entity has timely submitted to the local agency a written objection to that fee or assessment that specifies the grounds for alleging noncompliance, as specified.

This bill would provide that local agency responses to the timely submitted written objections shall go to the weight of the evidence

supporting the agency’s compliance with the substantive limitations on fees and assessments imposed by the constitutional provisions. The bill would also prohibit an independent cause of action as to the adequacy of the local agency’s responses.

This bill would, if the local agency complies with the specified procedures, provide that in any judicial action or proceeding to review, invalidate, challenge, set aside, rescind, void, or annul the fee or assessment for failure to comply with the constitutional provisions, the court’s review is limited to a record of proceedings containing specified documents, except as otherwise provided. The bill would make related findings and declarations.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) State law requires that establishing or making certain changes
- 4 to property-related fees, like water service rates, occur in
- 5 accordance with procedures outlined in Section 6 of Article XIII
- 6 D of the California Constitution, commonly referred to as
- 7 “Proposition 218.” Establishing or making certain changes to
- 8 special assessments is governed by Section 4 of Article XIII D of
- 9 the California Constitution.
- 10 (b) The “exhaustion of remedies” principle is a fundamental
- 11 concept of administrative law governing the relationship between
- 12 agencies and courts. It requires individuals to raise concerns about
- 13 proposed agency actions to the agencies themselves, in the first
- 14 instance, rather than to the courts. Individuals that disagree with
- 15 agency actions must pursue available agency procedures for
- 16 addressing those concerns before they may sue the agency in court
- 17 (*Plantier v. City of Ramona Municipal Water Dist.* (2019) 7 Cal.5th
- 18 372, 382-383, citing *Coachella Valley Mosquito & Vector Control*
- 19 *Dist. v. California Public Employment Relations Bd.* (2005) 35
- 20 Cal.4th 1072, 1080; see *Abelleira v. District Court of Appeal,*
- 21 *Third Dist.* (1941) 17 Cal.2d 280, 292–293).
- 22 (c) The purpose of this act is to create an exhaustion of
- 23 administrative remedies procedure that, if implemented by a local
- 24 agency, requires ratepayers to bring an objection regarding a

1 proposed property-related water or sewer fee or charge, or any
2 special assessment to the local public agency governing body's
3 attention prior to the deadline established by the local public agency
4 as part of the rate or assessment consideration process. The purpose
5 of the act is also to provide an opportunity for the local public
6 agency to address or resolve the objection or objections before its
7 governing body makes a final decision on whether to establish a
8 new, or amend a current, property-related fee or special assessment
9 pursuant to Proposition 218.

10 (d) The procedure created by this act is intended to provide a
11 meaningful opportunity for a ratepayer to resolve an objection to
12 a proposed new or amended property-related water or sewer fee
13 or charge, or any special assessment before resorting to litigation
14 after the new or amended rate or special assessment is approved
15 (see *Plantier v. Ramona Municipal Water Dist.*, supra, 7 Cal.5th
16 at p. 338). Even if such an objection is not fully resolved, the local
17 agency's considering and responding to the objection can narrow
18 the dispute and will create a better evidentiary record for court
19 review in deciding any later litigation (see *id.*).

20 (e) This act establishes a "clearly defined machinery for the
21 submission, evaluation, and resolution of complaints by aggrieved
22 parties"(see *Plantier v. Ramona Municipal Water Dist.*, supra, 7
23 Cal. 5th at p. 384 citing *Rosenfield v. Malcom* (1967) 65 Cal.2d
24 559, 566) and is consistent with the intent of Proposition 218,
25 which is to enhance communication between ratepayers and
26 agencies (*Morgan v. Imperial Irrigation Dist.* (2014) 223
27 Cal.App.4th 892, 911; see also *Bighorn-Desert View Water Agency*
28 *v. Virjil* (2006) 39 Cal.4th 205, 220).

29 SEC. 2. Section 53759.1 is added to the Government Code, to
30 read:

31 53759.1. (a) For purposes of this section, the following
32 definitions apply:

33 (1) "Exhaustion of remedies requirement" means the written
34 objection requirement under subdivision (b).

35 (2) "Fee or assessment" means any property-related water or
36 sewer fee or charge, or any special assessment.

37 (b) For purposes of any fee or assessment adopted by a local
38 agency pursuant to Section 4 or 6 of Article XIII D of the
39 California Constitution, if the local agency complies with the
40 procedures described in subdivision (c), a person or entity shall

1 be prohibited from bringing a judicial action or proceeding alleging
2 noncompliance with Article XIII D of the California Constitution
3 for any new, increased, or extended fee or assessment, unless that
4 person or entity has timely submitted to the local agency a written
5 objection to that fee or assessment that specifies the grounds for
6 alleging noncompliance, and shall be subject to the requirements
7 of Section 53759.2.

8 (c) The exhaustion of remedies requirement authorized by
9 subdivision (b) applies only if the local agency does all of the
10 following:

11 (1) Posts on its internet website and makes available to the
12 public a proposed fee or assessment and a written basis for the fee
13 or assessment no less than 45 days prior to the protest hearing
14 required by Article XIII D of the California Constitution.

15 (2) Provides at least 45 days for a property owner to review the
16 proposed fee or assessment and to timely submit to the local agency
17 a written objection to that fee or assessment that specifies the
18 grounds for alleging noncompliance. To be considered timely, any
19 written objection shall be submitted by a deadline established by
20 the local agency, which shall be no less than 45 days after the local
21 agency complies with paragraph (1).

22 (3) Considers and responds in writing to any timely submitted
23 written objections prior to the close of the protest hearing or ballot
24 tabulating hearing required under Section 4 or 6 of Article XIII D
25 of the California Constitution. Timely submitted written objections
26 and agency responses required by this subdivision shall be
27 presented to the local agency's governing body for consideration
28 prior to or during a protest hearing or ballot tabulation hearing
29 required under Section 4 or 6 of Article XIII D of the California
30 Constitution.

31 (4) Includes in the written notice, sent pursuant to paragraph
32 (c) of Section 4 or paragraph (1) of subdivision (a) of Section 6 of
33 Article XIII D of the California Constitution, a statement that
34 written objections must be submitted within the written objection
35 period set by the local agency pursuant to paragraph (2) to preserve
36 any right to challenge that fee or assessment.

37 (5) Concludes the procedures described in paragraphs (1) to (4),
38 inclusive, prior to the completion of the protest hearing and ballot
39 tabulating hearing required by Section 4 or 6 of Article XIII D of
40 the California Constitution.

(d) The local agency's governing body, in exercising its legislative discretion, shall determine whether the written objections and the agency's response warrant clarifications to the proposed fee or assessment, a reduction in the proposed fee or assessment, further review before making a determination on whether clarification or reduction is needed, or whether to proceed with the protest hearing or ballot tabulation hearing required under Section 4 or 6 of Article XIII D of the California Constitution.

(e) The local agency's response to timely submitted written objections, as required under paragraph (3) of subdivision (c), shall go to the weight of the evidence supporting the agency's compliance with the substantive limitations on fees and assessments imposed by Section 4 or 6 of Article XIII D of the California Constitution. There shall be no independent cause of action as to the adequacy of a local agency's response pursuant to paragraph (3) of subdivision (c).

SEC. 3. Section 53759.2 is added to the Government Code, to read:

53759.2. (a) For purposes of this section, "fee or assessment" means any property-related water or sewer fee or charge, or any special assessment.

(b) Notwithstanding any law, if a local agency adopts a fee or assessment and complies with subdivision (c) of Section 53759.1, any judicial action or proceeding to review, invalidate, challenge, set aside, rescind, void, or annul the fee or assessment for failure to comply with Section 4 or 6 of Article XIII D of the California Constitution shall be subject to the following requirements:

(1) Except as provided in paragraph (2), the court's review shall be limited to the record of proceedings before the local agency for that fee or assessment as follows:

(A) Any cost-of-service or rate study or report, any engineer's report, agency staff reports, and related documents prepared by the local agency with respect to the fee or assessment.

(B) Any transcript or minutes of the proceedings at which the decisionmaking body of the local agency heard testimony or public comment on the fee or assessment, and any transcript or minutes of the proceedings before any advisory body to the local agency that were presented to the decisionmaking body before action on the fee or assessment.

1 (C) All notices issued by the local agency for purposes of
2 complying with subdivision (c) of Section 53759.1, to comply
3 with the requirements of Section 4 or 6 of Article XIII D of the
4 California Constitution, or with any other law requiring notice.

5 (D) All timely submitted written objections and any local agency
6 responses to those objections made pursuant to Section 53759.1.

7 (E) All written evidence or correspondence related to the fee or
8 assessment submitted to, or transmitted from, the local agency
9 prior to the completion of the protest hearing or ballot tabulation
10 hearing required under Section 4 or 6 of Article XIII D of the
11 California Constitution.

12 (F) Documentation of the local agency's final decision on the
13 fee or assessment, including any ordinance, resolution, rule,
14 regulation, meeting minutes, or other record of the local agency's
15 decision.

16 (G) All protests, ballots, and records of the tabulation, protests,
17 or ballots made in connection with the fee or assessment.

18 (H) All written evidence or documentation supporting the fee
19 or assessment in the local agency's files prior to completion of the
20 protest hearing or ballot tabulation hearing required under Section
21 4 or 6 of Article XIII D of the California Constitution.

22 (2) Evidence outside the record of proceedings before the local
23 agency may be admitted under the following circumstances:

24 (A) Where the evidence is relevant to issues other than the
25 validity of the fee or assessment, such as a petitioner's standing
26 and capacity to sue.

27 (B) Where the evidence is relevant to affirmative defenses,
28 including, but not limited to, laches, estoppel, and res judicata.

29 (C) Where the evidence is relevant to the accuracy and
30 completeness of the administrative record certified by the local
31 agency.

32 (D) Where the evidence is relevant to the local agency's
33 compliance with the procedures set forth in subdivision (c) of
34 Section 53759.1.

35 (E) Where the evidence is necessary to explain information in
36 the administrative record to demonstrate compliance with Section
37 4 or 6 of Article XIII D of the California Constitution.