

Jennifer Blackman

From: ACWA <acwabox@acwa.com>
Sent: Thursday, March 14, 2024 10:54 AM
To: Jennifer Blackman
Subject: Legislative Alert: Members Urged to Join Coalition, Attend Hearing on ACWA-Sponsored AB 2257



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LEGISLATIVE | RATES
March 14, 2024

Members Urged to Join Coalition, Attend Hearing on ACWA-Sponsored AB 2257

ACWA is urging members to testify in support of ACWA-sponsored [AB 2257](#) during a March 19 hearing before the Assembly Judiciary Committee. If passed, the bill would help member agencies defend against Proposition 218 lawsuits by requiring litigants to participate and raise specific objections before a public hearing.

Authored by Assemblymember Lori Wilson (D-Suisun City) and sponsored by ACWA, the bill would bring to light all possible complaints during the rate-setting process and provide an opportunity to resolve a dispute and avoid litigation. It would build on the success of ACWA-sponsored SB 323 (Caballero, 2021), which created a 120-day statute of limitations for filing lawsuits against water and sewer rates through the Proposition 218 process.

ACWA staff is working closely with Assemblymember Wilson to gain support for the bill, which is outlined in a [fact sheet](#). The bill has been referred to both the Assembly Judiciary Committee and Local Government Committee.

Take Action Now

1. Attend the hearing Tuesday, March 19. ACWA is asking members to testify in person at the Assembly Judiciary Committee to urge a “Yes” vote. The hearing is scheduled for 9 a.m. in the State Capitol, Room 437. Phone testimony will not be available for this hearing.

2. Join the coalition of water districts and other entities to be included in future coalition letters in support of AB 2257 by completing a short [online form](#).

Background

Water and sewer agencies throughout California face significant financial obligations as they work to ensure the delivery of safe and reliable water services while managing wastewater effectively. These obligations encompass a range of expenses, including infrastructure development and maintenance, regulatory compliance, operational costs, and emergency preparedness. With climate change presenting unprecedented challenges, agencies must also adapt and enhance aging infrastructure to mitigate the impacts of increasingly frequent and severe climate-related events.

The revenue necessary for public agencies to fulfill their essential functions predominantly comes from service rates and assessments. While these agencies require financial stability to meet ever increasing demands, a rise in Proposition 218 litigation is making it increasingly difficult to ensure agencies can pass fair and reasonable rates to cover the costs of operations and investments.

Oftentimes, these suits are filed without first having raised alleged violations with the public agency during the public process leading up to the decision to adopt rates or an assessment. When litigants avoid raising concerns with proposed rates or assessments during the ratemaking process, public agencies cannot endeavor to resolve the dispute and avoid litigation. Surprise lawsuits have the potential to undermine an agency’s ability to maintain stable budgets necessary to operate effectively.

AB 2257 builds on the strict procedural ratemaking requirements of Proposition 218 by creating a robust public process that facilitates dialogue, transparency, and the opportunity to resolve issues and avoid costly litigation.

Questions

For questions about AB 2257, please contact ACWA Senior State Relations Advocate [Kristopher Anderson](#) at (916) 441-4545.

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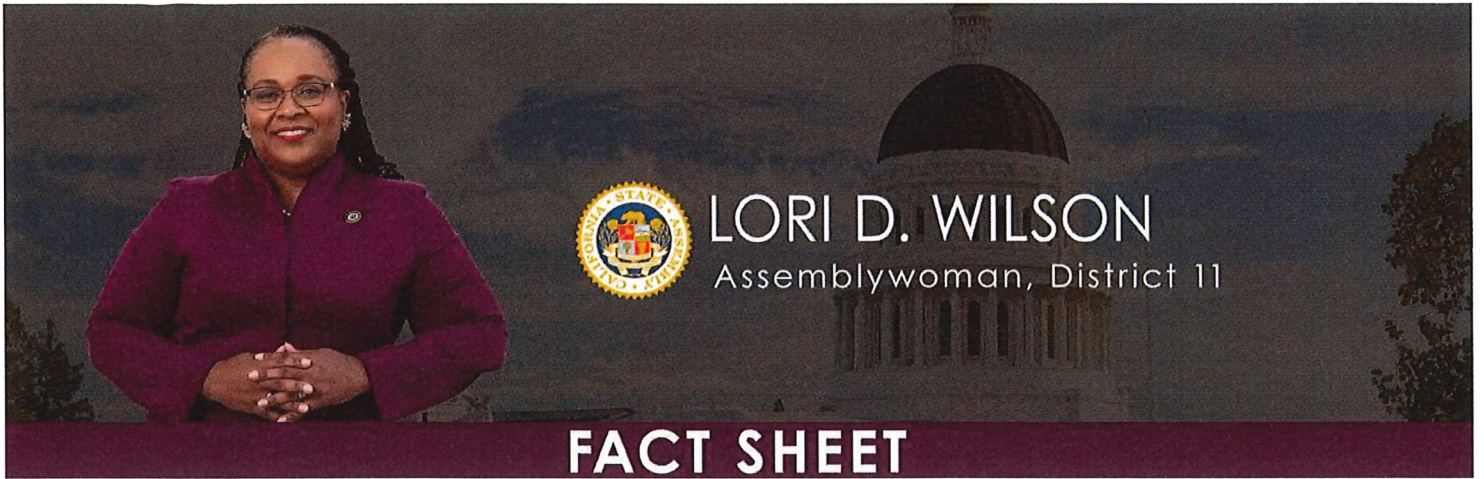
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LORI D. WILSON

Assemblywoman, District 11

FACT SHEET

AB 2257

SUMMARY

AB 2257 would authorize public agencies to adopt procedures for the submittal and consideration of public comments regarding proposed water or sewer rates or assessments (fees). If an agency elects to adopt procedures, a person would be required to timely submit written comments that specify the grounds for alleging that the fees do not comply with Proposition 218 in order to challenge the fees in court. Public agencies would be required to provide written responses to all comments received before acting on the proposed fees. AB 2257 would also detail documents that would comprise the administrative record in the event of litigation.

BACKGROUND

California's water and sewer agencies provide essential government services for the benefit of communities, agriculture, industries, and the environment. Public agencies are responsible for ensuring a consistent and reliable water supply, safeguarding the quality of drinking water, planning, constructing, and maintaining infrastructure, collecting and treating wastewater, and much more.

With climate change presenting unprecedented challenges, these agencies also must adapt and enhance aging infrastructure to mitigate the impacts of increasingly frequent and severe climate-related events.

The revenue necessary for public agencies to fulfill their essential functions predominantly comes from service rates and assessments. While these agencies require financial stability to meet ever increasing demands, a rise in Proposition 218 litigation is making it increasingly difficult to ensure agencies can pass fair and reasonable rates to cover the costs of operations and investments. Oftentimes, these suits are filed without first having raised these alleged violations with the public agency

during the public notice-and-comment process leading up to the decision to adopt rates or assessment. When litigants avoid raising concerns with proposed rates or assessments during the ratemaking process, the public agencies cannot endeavor to resolve the dispute and avoid litigation. Surprise lawsuits have the potential to undermine an agency's ability to maintain stable budgets necessary to operate effectively.

EXISTING LAW

Proposition 218, or the "Right to Vote on Taxes Act," was approved by California voters in 1996. This initiative added to the California Constitution and imposed procedural and substantive requirements that govern how local agencies levy fees and charges to pay their costs to provide property-related services, like water and sewer service.

Proposition 218's procedural requirements mandate that an agency must mail written notice to property owners at least 45 days in advance of a public hearing for the ratemaking agency to consider any protests to the new or increased rates it has proposed for adoption. The hearing includes an opportunity for property owners to object to the proposed fee or charge (called a "protest"), and the agency must consider all protests received. If written protests against the proposed fee or charge are presented by a majority of property owners (called a "majority protest"), Proposition 218 prohibits the agency from imposing the fee or charge. If less than a majority protest, the agency must decide whether to adopt the rates as proposed, to reduce the rates, or to start over with a new ratemaking proposal.

Proposition 218's key substantive limit requires a local agency to demonstrate that any new or increased property-related fee or charge reasonably represents the cost of providing service.

One of the most fundamental rules governing the relationship between agencies and courts is the "exhaustion of remedies" principle, which requires individuals to raise concerns about proposed agency action by pursuing available agency procedures for addressing concerns before they may sue the agency in court. The exhaustion requirement serves several important purposes: (1) permitting the agency to resolve factual issues, apply its expertise, and exercise statutorily delegated remedies; (2) bolstering administrative autonomy; (3) promoting judicial economy; and (4) mitigating damages.

Finally, when a party challenges the validity of an administrative agency's legislative or quasi-legislative action, the general rule is that relevant evidence is confined to the record of proceedings before the legislative body. This rule, known as the "record review rule," comes from the California Supreme Court's holding in *Western States Petroleum Association v. Superior Court* (1995) 9 Cal.4th 559 (Western States), and is grounded in the separation of powers doctrine.

SOLUTION

This bill would create an exhaustion of administrative remedies procedure for water and sewer rates and assessments that, if public agencies elect to follow, would require the public to submit a timely written objection to the ratemaking proposal or new assessment and raise the particular Proposition 218 compliance issues the plaintiff may later litigate.

Public agencies that adopt exhaustion procedures would be required to provide their board and the public with written responses to each comment received before an agency acts on proposed rates or assessments. With a greater understanding of potential concerns and the agency's responses, the agency's board would have the opportunity to abandon its ratemaking/assessment proposal, change it (reduce it), or to better explain why it complies with Proposition 218's substantive limitations, before having to defend it in litigation.

If a public agency complies with the exhaustion procedures, the bill would specify documents that could be included in the administrative record, subject to certain exceptions, in the event of litigation.

AB 2257 builds on the strict procedural ratemaking requirements of Proposition 218 by creating a robust public process that facilitates dialogue, transparency, and the opportunity to resolve issues and avoid costly litigation. Codifying a procedure that requires issue exhaustion in Proposition 218 litigation would protect both legislative and adjudicative functions by allowing a

legislative body to hear the evidence, apply its reasoned discretion and expertise, and create an administrative record to facilitate judicial review. This would also foster better-informed administrative decisions, which benefit the objector, the public agency, and members of the public within the public agency's jurisdiction. This is especially valuable in ratemaking cases in which evidence and policies are highly technical.

Contact:

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Support:

Association of California Water Agencies (ACWA),
(Sponsor)

Updated February 8, 2024



AB-2257 Local government: property-related water and sewer fees and assessments: remedies. (2023-20

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CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

ASSEMBLY BILL

NO. 2257

Introduced by Assembly Member Wilson

February 08, 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 Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) State law requires that establishing or making certain changes to property-related fees, like water service rates, occur in accordance with procedures outlined in Section 6 of Article XIII D of the California Constitution, commonly referred to as

"Proposition 218." Establishing or making certain changes to special assessments is governed by Section 4 of Article XIII D of the California Constitution.

(b) The "exhaustion of remedies" principle is a fundamental concept of administrative law governing the relationship between agencies and courts. It requires individuals to raise concerns about proposed agency actions to the agencies themselves, in the first instance, rather than to the courts. Individuals that disagree with agency actions must pursue available agency procedures for addressing those concerns before they may sue the agency in court (*Plantier v. City of Ramona Municipal Water Dist.* (2019) 7 Cal.5th 372, 382-383, citing *Coachella Valley Mosquito & Vector Control Dist. v. California Public Employment Relations Bd.* (2005) 35 Cal.4th 1072, 1080; see *Abelleira v. District Court of Appeal, Third Dist.* (1941) 17 Cal.2d 280, 292-293).

(c) The purpose of this act is to create an exhaustion of administrative remedies procedure that, if implemented by a local agency, requires ratepayers to bring an objection regarding a proposed property-related water or sewer fee or charge, or any special assessment to the local public agency governing body's attention prior to the deadline established by the local public agency as part of the rate or assessment consideration process. The purpose of the act is also to provide an opportunity for the local public agency to address or resolve the objection or objections before its governing body makes a final decision on whether to establish a new, or amend a current, property-related fee or special assessment pursuant to Proposition 218.

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

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

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

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

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

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

(b) For purposes of any fee or assessment adopted by a local agency pursuant to Section 4 or 6 of Article XIII D of the California Constitution, if the local agency complies with the procedures described in subdivision (c), a person or entity shall be prohibited from bringing a judicial action or proceeding alleging noncompliance with Article XIII D of the California Constitution for any new, increased, or extended fee or assessment, 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, and shall be subject to the requirements of Section 53759.2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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