Article X Amendment

Southern California Water Dialogue – Stormwater Meeting

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Coalition Effort

- Article X Amendment was developed by a coalition of local government organizations:
  - Association of California Water Agencies (ACWA)
  - California State Association of Counties (CSAC)
  - The League of California Cities
Three Legal Problems

- **Storm water and flood control** are addressed differently than water service and sewer services under Prop. 218

- Prop 218 limits the ability of public agencies to establish **lifeline rates**

- Although **conservation-based rates** are legal, there are conflicting court decisions
Legal Problem 1

- Fees for water, sewer and refuse collection service fees are subject to a public hearing and majority protest procedure under Prop. 218.

- All other property-related fees are subject to public hearing and majority protest procedure plus a voter approval requirement:
  - Majority vote of affected property owners; or
  - 2/3 vote of the electorate.
Legal Problem 1

**HJTA v. City of Salinas:**

- Stormwater services are not water or sewer services
- Flood control services?

**Legal Impact:**

- Additional procedural requirements make it difficult to fund stormwater and flood control services
Legal Problems 2 & 3

California Constitution, article XIII D, section 6(b) substantive limitations:

- Revenues from fees *shall not exceed* the funds required to provide the service

- Fees shall not exceed the *proportional cost* of providing the service *attributable to the parcel* on which it is imposed
Legal Problem 2

- Substantive provisions limit the ability of public agencies to establish *discounted rates for low income customers*
  - Cannot use ratepayer service fees to fund discounts
  - Violates proportionality requirements
Legal Problem 3

- Substantive provisions limit the ability of public agencies to establish *conservation-based rates*
- Conflicting court decisions
- Not all agencies have multiple sources of supply
Proposed Constitutional Amendment

POLICY GOALS:

- Enhance the ability of local agencies to finance stormwater and flood control services;
- Authorize voluntary lifeline rates.
- Provide more flexibility for the voluntary establishment of water conservation-based rates; and
Proposed Constitutional Amendment

**OTHER GOALS:**

- Maintain local control
- Provide flexibility to local agencies
- Do no harm
**Proposed Constitutional Amendment**

**APPROACH:** Amend Article X of the Constitution instead of Article XIII (and its provisions from Proposition 218).

- Article X deals with water.
- This approach leaves Proposition 218 process with no change for those agencies that want to continue to use that process.
- The approach provides for an **alternative** process.
Overview of the Proposal

- The new Article X process would be **optional**.
- It would be up to the local agency to choose which process it will use when it charges, increases or extends a fee – Prop. 218 or the new Article X process.
Overview of the Proposal

**Definitions:**

- Stormwater and flood control are covered explicitly

**Key Authorizations:**

- *Voluntary* conservation-based rates
- *Voluntary* lifeline rates (lower rates for low-income households with other fee payers making up the difference)
Overview of the Proposal

Fee Payer Protections:

- Revenues collected by the agency could not exceed reasonable cost of providing the service
- Allocation of costs would need to be fair/reasonable relative to the burden on/benefit received by the rate payer
- Process steps would be required
Proposed Process

Notice → Opportunity for Protest → Public Hearing
Overview of the Proposal

Notice:

• Written notice by mail to the customer listed in the billing or customer service records

• Notice could be included in the regular billing statement if it is mailed

• If fee is charged on a parcel, the written notice would go to the owner
Overview of the Proposal

Notice would include:

- The amount of the fee (or the basis of how the fee would be calculated);
- A general description of what would be funded;
- The date, time and location for a public hearing; and
- A statement about the effect of a majority protest.
Overview of the Proposal

Majority Protest:

- If a majority of those people noticed submitted written protests by the time of the public hearing, the agency could not impose or increase the fee.

Public Hearing:

- The agency would be required to hold a public hearing not less than 45 days of mailing the notice.
Two Pathways

- Can be passed by *initiative*

- Can be enacted by Constitutional Amendment passed by a *2/3 vote* of both houses *of the Legislature* (bipartisan votes) *with approval by the voters*

- Either way, it would be an amendment to the California Constitution
Initiative Process

- Filed initiative with Attorney General on Dec. 14
- Filed revised version on Jan. 19
- Title and Summary will be available in late February
Questions?

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