



Association
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Article X Amendment

• Southern California Water Dialogue – Stormwater Meeting •

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• Jan. 27, 2016 •



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

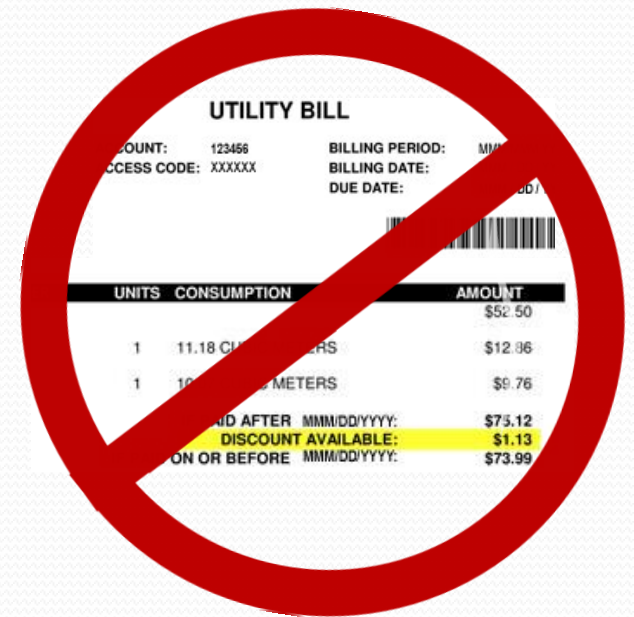
California Constitution, article XIII D, section 6(b) substantive limitations:

- 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:

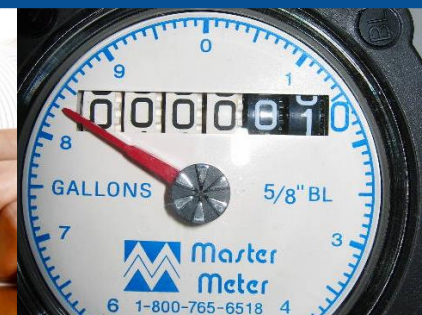
- *Voluntary* conservation-based rates
- *Voluntary* lifeline rates (lower rates for low-income households with other fee payers making up the difference)



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

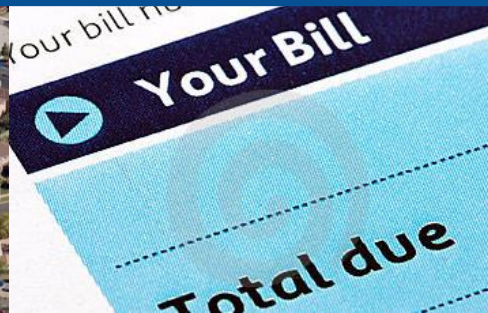


Public
Hearing

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.

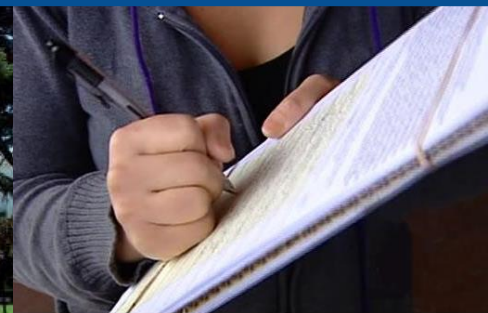
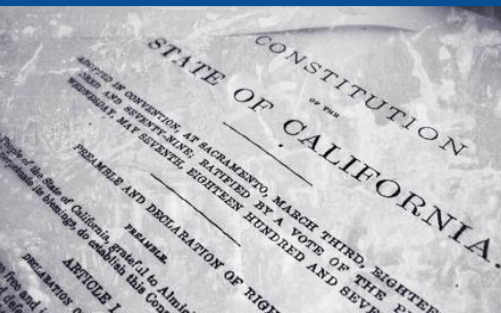
Public Hearing:

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



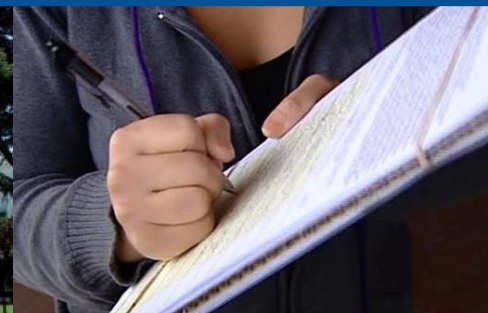
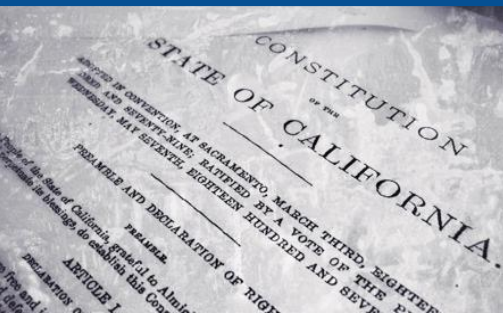
Two Pathways

- Can be passed by *initiative*
- Can be enacted by Constitutional Amendment passed by a $\frac{2}{3}$ *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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