



REPORT TO LAW & LEGISLATION COMMITTEE City of Sacramento

915 I Street, Sacramento, CA 95814-2604

Staff Report
May 20, 2008

Honorable Members of the
Law and Legislation Committee

Title: Legislative Position: SCA 12 Relating to Stormwater (Drainage) Fees and Charges

Location/Council District: Citywide

Recommendation: Staff recommends that the Law and Legislation Committee support SCA 12.

Contact: Jessica Hess, Media and Communication Specialist, (916) 808-8260

Presenters: Dave Brent, Engineering Services Manager (916) 808-1420

Department: Utilities

Division: Administration

Organization No: 3311

Description/Analysis

Issue: Currently, under California law (as approved by voters with Proposition 218 in 1998), stormwater (drainage) fees and charges that are collected from residents and businesses in the City must be approved by 2/3 of the voters residing in the area. SCA 12 will remove this 2/3 voter approval requirement and allow drainage fees and charges to be approved by City Council following the same requirements as other utility services (water, sewer and solid waste).

Policy Considerations: Currently, under Proposition 218, stormwater (drainage) fees and charges that are collected from residents and businesses in the City must be approved by 2/3 of the voters residing in the area. Water, sewer and solid waste fees and charges are approved by City Council following a public notice and hearing.

Because of this restriction the City of Sacramento has not raised drainage rates since Proposition 218 was passed in 1998. In the ensuing years, more and more regulatory requirements have been placed on the drainage fund and operational costs have increased with inflation. Monies collected by the drainage fund are increasingly being used to meet regulatory requirements, leaving less money

Legislative Position: SCA 12 Drainage Fees

May 20, 2008

available to operate the drainage system and complete capital improvements to rehabilitate and improve the drainage system. It is estimated that within the next 2 years, the drainage fund will no longer have money available to complete necessary capital upgrades and repairs to the system.

Support of this measure will allow the Department of Utilities to bring forward proposed rate increases to the Rate Advisory Commission and City Council to address the operational, capital and regulatory needs of the drainage fund. It will also allow these bodies to adjust the rates as necessary in the future without the need for an expensive election process.

Environmental Considerations: None


Rationale for Recommendation: Staff recommends support of SCA 12. This measure will allow City Council and the Utilities Rate Advisory Commission to review and approve or deny any proposed drainage rate or fee changes, as it does with other utilities services.

Financial Considerations: Passage of SCA 12 will allow City Council and the Utilities Rate Advisory Commission to review and approve all proposed changes in drainage rates and fees as it does with water, sewer or solid waste services.

Additionally, passage of SCA 12 will help to ensure continued funding of the drainage fund to complete necessary improvements and repairs to the drainage system.

Emerging Small Business Development (ESBD): None

Respectfully Submitted by 
Jessica Hess, Media and Communication Specialist

Approved by: 
Gary Reents, Director

Recommendation Approved:

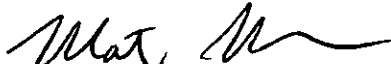

Ray Kerridge
City Manager

Table of Contents:

Report	pg. 1
Attachments	
1 Draft Letter of Support for SCA12	pg. 4

Legislative Position: SCA 12 Drainage Fees

May 20, 2008

2 Bill Text SCA 12

pg. 5-7

3 Bill Analysis SCA 12

pg. 8-12

Legislative Position: SCA 12 Drainage Fees

May 20, 2008

Attachment 1

May 20, 2008

**The Honorable Senator Tom Torlakson
California State Senate
State Capitol
Room 5050
Sacramento, CA 95814
Attn: Legislative Director**

Subject: Support of SCA 12- Local Government: Property Related Fees

Dear Senator Torlakson,

On behalf of the City of Sacramento, I am writing to inform you that we have taken a support position on SCA 12. SCA 12 provides our residents with a way to review and protest potential changes in their stormwater (drainage) rates and fees while providing the City a way to adjust their rates and fees without an expensive election process.

Thank you for introducing this legislation.

Sincerely,

**SANDY SHEEDY, Chair
Law and Legislation Committee**

**cc: Mayor Fargo and Members of the City Council
David Jones, Emmanuel and Jones and Associates**

AMENDED IN SENATE JUNE 18, 2007

Senate Constitutional Amendment

No. 12

Introduced by Senators Torlakson and Yee
(Coauthor: Senator Kuehl)

May 21, 2007

Senate Constitutional Amendment No. 12—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 6 of Article XIII D thereof, relating to local government finance.

LEGISLATIVE COUNSEL'S DIGEST

SCA 12, as amended, Torlakson. Local government: property-related fees.

The California Constitution, with the exception of fees or charges for sewer, water, and refuse collection services, conditions the imposition or increase of a property-related fee or charge upon approval by either a majority vote of the owners of the properties subject to the fee or charge or, at the option of the agency imposing the fee or charge, by a $\frac{2}{3}$ vote of the voters residing in the area affected by the fee or charge.

This measure would additionally exclude fees and charges for stormwater and surface water drainage urban runoff management from these approval requirements for the imposition or increase of a property-related fee or charge.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

- 1 Resolved by the Senate, the Assembly concurring, That the
- 2 Legislature of the State of California at its 2007-08 Regular
- 3 Session commencing on the fourth day of December 2006,

SCA 12

- 2 -

1 two-thirds of the membership of each house concurring, hereby
2 proposes to the people of the State of California, that the
3 Constitution of the State be amended as follows:

4 That Section 6 of Article XIII D thereof is amended to read:

5 SEC. 6. Property Related Fees and Charges. (a) Procedures
6 for New or Increased Fees and Charges. An agency shall follow
7 the procedures pursuant to this section in imposing or increasing
8 any fee or charge as defined pursuant to this article, including, but
9 not limited to, the following:

10 (1) The parcels upon which a fee or charge is proposed for
11 imposition shall be identified. The amount of the fee or charge
12 proposed to be imposed upon each parcel shall be calculated. The
13 agency shall provide written notice by mail of the proposed fee or
14 charge to the record owner of each identified parcel upon which
15 the fee or charge is proposed for imposition, the amount of the fee
16 or charge proposed to be imposed upon each, the basis upon which
17 the amount of the proposed fee or charge was calculated, the reason
18 for the fee or charge, together with the date, time, and location of
19 a public hearing on the proposed fee or charge.

20 (2) The agency shall conduct a public hearing upon the proposed
21 fee or charge not less than 45 days after mailing the notice of the
22 proposed fee or charge to the record owners of each identified
23 parcel upon which the fee or charge is proposed for imposition.
24 At the public hearing, the agency shall consider all protests against
25 the proposed fee or charge. If written protests against the proposed
26 fee or charge are presented by a majority of owners of the identified
27 parcels, the agency shall not impose the fee or charge.

28 (b) Requirements for Existing, New or Increased Fees and
29 Charges. A fee or charge shall not be extended, imposed, or
30 increased by any agency unless it meets all of the following
31 requirements:

32 (1) Revenues derived from the fee or charge shall not exceed
33 the funds required to provide the property related service.

34 (2) Revenues derived from the fee or charge shall not be used
35 for any purpose other than that for which the fee or charge was
36 imposed.

37 (3) The amount of a fee or charge imposed upon any parcel or
38 person as an incident of property ownership shall not exceed the
39 proportional cost of the service attributable to the parcel.

1 (4) No fee or charge may be imposed for a service unless that
2 service is actually used by, or immediately available to, the owner
3 of the property in question. Fees or charges based on potential or
4 future use of a service are not permitted. Standby charges, whether
5 characterized as charges or assessments, shall be classified as
6 assessments and shall not be imposed without compliance with
7 Section 4.

8 (5) No fee or charge may be imposed for general governmental
9 services including, but not limited to, police, fire, ambulance or
10 library services, where the service is available to the public at large
11 in substantially the same manner as it is to property owners.
12 Reliance by an agency on any parcel map, including, but not
13 limited to, an assessor's parcel map, may be considered a
14 significant factor in determining whether a fee or charge is imposed
15 as an incident of property ownership for purposes of this article.
16 In any legal action contesting the validity of a fee or charge, the
17 burden shall be on the agency to demonstrate compliance with this
18 article.

19 (c) Voter Approval for New or Increased Fees and
20 Charges. Except for fees or charges for sewer, water, stormwater
21 and ~~surface water drainage~~ *urban runoff management*, or refuse
22 collection services, a property-related fee or charge shall not be
23 imposed or increased unless and until that fee or charge is
24 submitted and approved by a majority vote of the property owners
25 of the property subject to the fee or charge or, at the option of the
26 agency, by a two-thirds vote of the electorate residing in the
27 affected area. The election shall be conducted not less than 45 days
28 after the public hearing. An agency may adopt procedures similar
29 to those for increases in assessments in the conduct of elections
30 under this subdivision.

31 (d) Beginning July 1, 1997, all fees or charges shall comply
32 with this section.

Attachment 3
BILL ANALYSIS

SENATE RULES COMMITTEE	SCA 12
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 651-1520 Fax: (916)	
327-4478	

THIRD READING

Bill No: SCA 12
 Author: Torlakson (D) and Yee (D)
 Amended: 6/18/07
 Vote: 27

SENATE LOCAL GOVERNMENT COMMITTEE : 3-1, 6/27/07
 AYES: Negrete McLeod, Kehoe, Machado
 NOES: Harman
 NO VOTE RECORDED: Cox

SEN. ELECTIONS, REAPP. & CONST. AMEND. CMTEE. : 3-2,
 7/10/07
 AYES: Migden, Padilla, Calderon
 NOES: Battin, Cogdill

SUBJECT : Local government: property-related fees

SOURCE : Author

DIGEST : This constitutional amendment exempts new or increased stormwater and urban runoff management fees or charges from the California Constitutions voter approval requirements for property-related fees and charges.

ANALYSIS : Proposition 218 of 1996 defines a property-related 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. Before a local government can

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charge a new property-related fee, or increase an existing one, Proposition 218 requires local officials to:

1. Identify the parcels to be charged.
2. Calculate the fee for each parcel.
3. Notify the parcels' owners in writing about the fees and the hearing.
4. Hold a public hearing to consider and count protests.
5. Abandon the fees if a majority of the parcels' owners protest.

Existing law provides that further, new, or increased property-related fees require one of the following:

1. A majority-vote of the affected property owners.
2. Two-thirds registered voter approval.
3. Weighted ballot approval by the affected property owners.

Existing law provides however that this election requirement does not apply to property-related fees for sewer, water, or refuse collection services.

This constitutional amendment exempts new or increased stormwater and urban runoff management fees or charges from the California Constitution's voter approval requirements for property-related fees and charges.

Background

According to the Senate Local Government Committee analysis, California regulators are pushing counties, cities, and special districts to reduce urban runoff and stormwater discharges. But local officials face the problem of how to pay for community-wide efforts without requiring new development to pay a disproportionate share of those costs.

In 2002, an appellate court decision in Howard Jarvis Taxpayers Association v. City of Salinas found that charges imposed by the City of Salinas on developed parcels to fund stormwater management were property-related fees, and were not covered by Proposition 218's exemption for "sewer" or "water" services. As a result, those fees require a vote

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of property owners or registered voters.

Comments

According to proponents of this constitutional amendment, increasingly strict regulation of pollutants from stormwater and urban runoff has significantly increased the costs faced by local agencies responsible for controlling those pollutants, which can contaminate drinking water, despoil beaches, and endanger public health. Local agencies find themselves caught between the need to expend large amounts of money on stormwater runoff management and Proposition 218's prohibitively high requirements for approving fees to fund those efforts. This constitutional amendment gives California voters the opportunity to reverse the Salinas decision and carve out a fourth exception to Proposition 218, which would provide a much-needed infusion of funding for local stormwater and runoff management programs.

FISCAL EFFECT : Appropriation: No Fiscal Com.: No
Local: No

SUPPORT : (Verified 3/10/08)

Statewide

Association of California Water Agencies
California Association of Environmental Health
Administrators
California Coastal Coalition
California Coastkeeper Alliance
California Special Districts Association
California State Association of Counties
League of California Cities
Ocean Conservation Society

Regional

Bay Area Stormwater Management Agencies Association
City/County Association of Governments of San Mateo County
Friends of the Santa Clara River
Geosyntec Consultants (Los Angeles)
Heal the Bay (Southern California)
Inland Empire Waterkeeper
Irvine Ranch Water District
Metropolitan Water District of Southern California

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San Luis Obispo Coastkeeper
Santa Clara Valley Water District
Save the Bay (San Francisco Bay Area)
The River Project (Los Angeles)
Ventura Countywide Stormwater Quality Management Program

Counties

Contra Costa County
Lake County
San Bernardino County
San Joaquin County
San Mateo County
Santa Clara County
Santa Cruz County
Ventura County Board of Supervisors

Cities

Antioch
Brisbane
Burlingame
Camarillo
Chula Vista
Town of Colma
Clayton
Concord
Coronado
Covina
Daly City
El Cerrito
Eureka
Fremont
Half Moon Bay
Livermore
Lafayette
Lompoc
Long Beach
Los Angeles
Town of Los Gatos
Martinez
Manteca
Menlo Park
Millbrae
Monterey
Monterey Park

CONTINUED

5

Moorpark
Moreno Valley
Oceanside
Orinda
Oxnard
Pacifica
Palo Alto
Paramount
Pasadena
Pico Rivera
Pittsburg
Rancho Mirage
Redwood City
Ridgecrest
Roseville
Salinas
San Clemente
San Leandro
San Luis Obispo
San Mateo
San Pablo
Santa Clarita
Santa Monica
Saratoga
Scotts Valley
Signal Hill
South San Francisco
Sunnyvale
Thousand Oaks
Ventura
Walnut Creek
West Covina Public Works Department
Woodland

OPPOSITION : (Verified 1/3/08)

California Taxpayers' Association
Howard Jarvis Taxpayers Association

AGB:mw 3/10/08 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

CONTINUED

SCA 12
Page

6

**** END ****