

OFFICE OF THE
CITY COUNCIL

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CITY OF SACRAMENTO
CALIFORNIA

April 12, 1993

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Honorable Marian Bergeson, Chair
Senate Committee on Local Government
State Capital, Room #3063
Sacramento, CA 95814

RE: Senate Bill No. 695

Dear Senator Bergeson:

As chair of the Law and Legislation Committee of the Sacramento City Council, I want to express my opposition to SB 695. I anticipate the full City Council will take action on this bill soon, but wanted you to hear our concerns on a timely basis.

SB 695 would severely restrict, if not prohibit, the City's use of special assessment district financing for infrastructure improvements. If SB 695 were to be adopted, compliance with the onerous and unnecessary procedures inherent in this legislation would significantly increase the cost of forming districts to build necessary and desired public improvements. These increased costs would be borne by the homeowners and other property owners who benefit from the improvements, contrary to SB 695's title, "Homeowners' Relief Act of 1993".

The City of Sacramento has a solid history of using special assessment district financing for new development and improvement of existing neighborhood infrastructure. The vast majority of assessment districts are formed at the request of property owners. Only in rare instances, the City initiates district formation for public convenience and necessity.

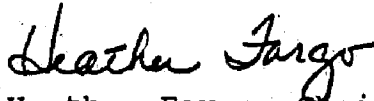
We strongly disagree with the Legislative Council Digest statement that "Existing law does not provide a comprehensive set of rules and procedures to generally govern the proposal and imposition of local assessments or fees." To the contrary, statutory and case law established over many years clearly defines the special assessment district process. We concur with the California Public

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Securities Association in their statement that the assessment district process "has been carefully structured by the legislature and the courts over an extended period of time to enable local governing bodies to achieve many legitimate objectives of local government."

I urge the Senate Committee on Local Government to consider these objections and defeat this unnecessary, deceptively-titled legislation.

Sincerely,



Heather Fargo, Chair
Law & Legislation Committee of the
Sacramento City Council

c: Kenneth Emanuels

**Introduced by Senators Leonard, Kopp, Lewis, and Watson
(Coauthors: Assembly Members Andal, Ferguson, Haynes,
Honeycutt, Horcher, Nolan, Quackenbush, and Richter)**

March 3, 1993

An act to add Part 4 (commencing with Section 55900) to Division 2 of Title 5 of the Government Code, relating to local finance.

LEGISLATIVE COUNSEL'S DIGEST

SB 695, as introduced, Leonard. Local government finance: fees and assessments: procedures and requirements.

Existing law does not provide a comprehensive set of rules and procedures to generally govern the proposal and imposition of local assessments or fees.

This bill would enact the Homeowners' Relief Act of 1993 to generally impose various requirements and limitations with respect to the imposition of new and existing local assessments and fees. By imposing new duties on local governments with respect to the imposition of existing assessments, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed \$1,000,000, shall be made from the State

Mandates Claims Fund.

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

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

1 SECTION 1. Part 4 (commencing with Section
2 55900) is added to Division 2 of Title 5 of the Government
3 Code, to read:

4
5 PART 4. HOMEOWNERS' RELIEF ACT OF 1993
6

7 55900. This part shall be known and may be cited as
8 the "Homeowners' Relief Act of 1993."

9 55901. (a) The Legislature hereby finds and declares
10 that Proposition 13 was approved by the voters to limit
11 property taxes and to ensure that new taxes are
12 submitted to the local electorate for approval. However,
13 since Proposition 13 was enacted, homeowners have been
14 increasingly subjected to increased property-related
15 "fees," "charges," and "assessments" that have unduly
16 burdened California taxpayers, disproportionately
17 impacted homeowners on fixed incomes, and reduced
18 housing affordability.

19 (b) The Legislature also finds and declares that most
20 of these new property-related "fees," "charges," and
21 "assessments" have been imposed without a vote of the
22 affected property owners. It is in the public interest to
23 ensure that the citizens in California have the right to
24 vote on impositions of, and increases in, assessments and
25 fees.

26 55902. (a) Notwithstanding any other provision of
27 law and subject to subdivision (b), this part shall apply to
28 all assessments and fees imposed pursuant to all
29 assessment or fee authorizations, including, but not
30 limited to, the Improvement Act of 1911 (Division 7
31 (commencing with Section 5000) of the Streets and
32 Highways Code), the Municipal Improvement Act of
33 1913 (Division 12 (commencing with Section 10000) of
34 the Streets and Highways Code), and the Landscaping

1 and Lighting Act of 1972 (Part 2 (commencing with
2 Section 22500) of Division 15 of the Streets and Highways
3 Code). The requirements of this part shall control in the
4 event of any conflict between those requirements and
5 the requirements of a specific assessment or fee
6 authorization.

7 (b) Nothing in this part is intended to affect existing
8 laws relating to the imposition of fees or other charges as
9 a condition for property development.

10 55903. As used in this part:

11 (a) "Agency" means any county, city and county, or
12 city, including any charter county or charter city, or any
13 district or special district. For purposes of this
14 subdivision, "special district" includes any governmental
15 district regardless of whether the district is empowered
16 to levy a property tax.

17 (b) "Assessment" means any levy or charge upon real
18 property by an agency for a direct or indirect benefit
19 conferred upon that real property, whether that levy or
20 charge is a new assessment or an annual assessment first
21 imposed in a previous year. "Assessment" includes a
22 special assessment, a benefit assessment, and a special
23 assessment tax, but does not include an ad valorem tax or
24 parcel tax.

25 (c) "Assessment for direct benefit" means only those
26 assessments imposed to finance capital costs for a
27 sidewalk, sewer, water, or a flood control or drainage
28 system.

29 (d) "Assessments for indirect benefit" means all
30 assessments, other than assessments for direct benefit,
31 imposed to finance capital costs, or operating and
32 maintenance expenses, for public improvements.

33 (e) "Capital costs" means the costs of the initial
34 acquisition, installation, or construction of a public
35 improvement by an agency.

36 (f) "Fee" means any levy or charge, other than a tax
37 or an assessment, imposed by an agency upon a person as
38 an incident of property ownership for a public service.

39 (g) "Flood control or drainage system" means a
40 system of bypasses, levees, canals, check dams, sumps,

1 channels, drains, basins, culverts, reservoirs, or other
2 works necessary for the control of storm and other
3 wastewater that, if uncontrolled, would threaten to flood
4 a parcel.

5 (h) "Operation and maintenance expenses" means
6 the cost of rent, repair, replacement, rehabilitation, fuel,
7 power, electrical current, care, or supervision necessary
8 to properly operate and maintain a public improvement.

9 (i) "Parcel" means an identifiable, contiguous piece of
10 real property that is subject to the imposition of an
11 existing or proposed assessment or fee.

12 (j) "Person" includes any person, firm, association,
13 organization, partnership, business trust, corporation, or
14 company.

15 (k) "Public improvement" means any tangible asset
16 used for a public service, a public purpose, or a public
17 purpose incidental to a public service.

18 (l) "Public service" means the provision of any
19 service to members of the public by an agency.

20 (m) "Sewer" includes the lateral and collecting
21 sewers for the handling, gathering, and disposal of
22 sewage or industrial waste discharge from a parcel.

23 (n) "Sidewalk" means that portion of a street,
24 immediately adjacent to a parcel, other than the
25 roadway, set apart by curbs, barriers, markings, or other
26 delineations for pedestrian travel.

27 (o) "Water" includes water works, conduits,
28 reservoirs, storage sites, water sheds, machinery, wells,
29 pumps, dams, storage tanks, hydrants, meters, other
30 appliances, and their appurtenances.

31 55904. Notwithstanding any other provision of law, no
32 tax, assessment, fee, or any other charge by any agency
33 shall be assessed on property or on any person as an
34 incident of property ownership except:

35 (a) A property tax authorized pursuant to Article XIII
36 and Article XIII A of the California Constitution.

37 (b) Assessments for direct benefit as provided in this
38 part.

39 (c) Assessments for indirect benefit as provided in this
40 part.

1 (d) Fees for sewer, water, and refuse collection
2 services.

3 55905. (a) Procedures applicable to the imposition of
4 an assessment include, but are not be limited to, the
5 following:

6 (1) An agency shall identify all parcels that will be
7 benefited by and be subject to an assessment. The
8 proportionate benefit derived by each identified parcel
9 shall be determined in relationship to the entirety of
10 either the capital cost or the operation and maintenance
11 expense of the public improvement.

12 (2) All assessments shall be supported by a detailed
13 engineer's report prepared by a registered professional
14 engineer certified by the State of California. A separate
15 report shall be prepared for each fiscal year and shall
16 contain plans and specifications for the improvements, an
17 estimate of the costs of the improvements, and a diagram
18 for the assessment district delineating each parcel to be
19 assessed.

20 (3) The amount of the assessment for each identified
21 parcel shall be calculated and the record owner of each
22 parcel shall be given written notice by not less than
23 first-class mail of the assessment, the reason therefor, the
24 amount of that assessment, and the basis upon which that
25 amount was calculated, together with the date, time, and
26 location of a public hearing on the proposed assessment.

27 (4) The agency shall conduct a public hearing upon
28 the assessment not less than 45 days after mailing the
29 notice of the assessment to the record owners of each
30 identified parcel. At the public hearing, the agency shall
31 consider all protests against the assessment. If written
32 protests against the assessment are presented at the
33 hearing by a majority of the record owners of the
34 identified parcels, the agency shall not impose the
35 assessment.

36 (5) Following the public hearing on the assessment, if
37 the imposition of that assessment is not precluded by
38 written protests and the agency has made a finding that
39 the assessment is authorized and should be imposed, the
40 agency shall provide written notice of that finding to the

1 record owners of each identified parcel. If an election is
2 required to approve the assessment, the agency shall
3 schedule an election on the assessment not less than 90
4 days after providing the record owners of each identified
5 parcel with written notice of the agency's finding.

6 (b) (1) If an agency has made a finding that an
7 assessment is authorized and should be imposed and the
8 assessment is an assessment for a direct benefit, the
9 agency shall not impose the assessment until it is
10 submitted to a vote of the electorate of the district for
11 which it is proposed and the imposition is approved by a
12 majority of the property owners who would be liable to
13 pay the assessment and who voted on the imposition.

14 (2) If an agency has made a finding that an assessment
15 is authorized and should be imposed and the assessment
16 is an assessment for an indirect benefit, the agency shall
17 not impose the assessment until it is submitted to a vote
18 of the electorate of the district for which it is proposed
19 and the imposition is approved by two-thirds of the
20 property owners who would be liable to pay the
21 assessment and who voted on the imposition.

22 (c) (1) An assessment, the revenues of which are
23 dedicated solely to the payment of either principal or
24 interest on bonded indebtedness, shall not be subject to
25 either of the following:

26 (A) The election requirements of subdivision (b).

27 (B) The prohibition against imposition contained in
28 paragraph (4) of subdivision (a).

29 (2) For purposes of paragraph (1), "bonded
30 indebtedness" includes other forms of indebtedness,
31 including, but not limited to, certificates of participation.

32 (3) Any assessment that has previously received the
33 requisite voter approval described in subdivision (b)
34 shall be subject to the voter approval requirements of
35 that subdivision only if the assessment, as applied to any
36 parcel, has been increased beyond the amount of the
37 assessment previously approved by the voters.

38 55906. An assessment shall not be imposed by any
39 agency unless that assessment meets all of the following
40 requirements:

1 (a) The amount of the assessment upon any parcel is
2 directly related to the proportionate benefit derived by
3 the parcel. An increase in the value of property shall by
4 itself be insufficient for the imposition of either a direct
5 or indirect assessment.

6 (b) The total annual amount of the assessment shall
7 not exceed the revenue required to finance the capital
8 costs or the operating and maintenance expenses, or
9 both, for the year except that a reserve fund not
10 exceeding 5 percent of the most recent year's total
11 budget of the assessment district may be maintained.

12 (c) Revenues derived from any assessment shall not
13 be used for any purpose other than that for which the
14 assessment was imposed.

15 55907. An agency shall, by statute, ordinance, or
16 resolution, adopt procedures to be followed by that
17 agency in imposing any fee as defined in this part,
18 including, but not limited to, the following:

19 (a) The parcels upon which, or the persons upon
20 whom, a proposed fee is to be imposed shall be identified.
21 The amount of the proposed fee with respect to each
22 parcel or person shall be calculated. The agency shall
23 provide written notice of the proposed fee to the record
24 owner of each subject parcel or each person stating the
25 amount of the fee proposed to be imposed upon each,
26 the basis upon which that amount was calculated, the
27 reason for the fee, together with the date, time, and
28 location of a public hearing on the proposed fee.

29 (b) The agency shall conduct a public hearing upon
30 the proposed fee not less than 45 days after mailing the
31 notice of the proposed fee to the record owners of each
32 parcel or to each person subject to the proposed fee. At
33 the public hearing, the agency shall consider all protests
34 against the proposed fee.

35 (c) After the conduct of a public hearing on the
36 proposed fee, the agency shall, if it has found that the
37 proposed fee should be imposed, schedule an election on
38 the fee to be held not less than 90 days after the date of
39 that finding.

40 (d) An agency shall not impose a fee unless and until

1 the fee is approved by a majority vote of the record
2 owners of the parcels or the persons subject to the fee
3 who have voted on the imposition.

4 55908. A fee shall not be imposed by any agency
5 unless that fee meets all of the following conditions:

6 (a) The anticipated revenues to be derived from the
7 fee do not exceed the anticipated amount required to
8 provide the public service, or to finance the capital costs
9 or operating and maintenance expenses of the public
10 improvement.

11 (b) The use of revenues derived from the fee for any
12 purpose other than the purpose for which the fee was
13 imposed are prohibited.

14 (c) The amount of the fee imposed upon any parcel or
15 person shall not exceed the parcel's or person's
16 anticipated proportional share of the cost of the public
17 service, the public improvement, or the operating and
18 maintenance expenses of a public improvement.

19 55909. (a) Any person, or his or her authorized
20 representative, liable to pay any assessment or fee, may
21 protest either whether he or she or his or her parcel or
22 parcels should be subject to the assessment or fee, or the
23 propriety of the amount of that assessment or fee. Any
24 protest shall be made in writing, or both in writing and
25 in person. Because protest hearings are legislative and
26 not adjudicatory in nature, a protest shall be deemed
27 sufficient if it states the grounds upon which it is made,
28 and it is not necessary that the protest set forth all
29 supporting evidentiary material that may be used later in
30 an action challenging the assessment or fee.

31 (b) Any affected person may bring an action
32 challenging the legality of an assessment or fee, or the
33 amount thereof. In any action where an affected person
34 contends that the property or person being charged
35 derives no benefit or service or an inadequate benefit or
36 service proportional to the amount of the assessment or
37 fee, the burden shall be on the agency to demonstrate
38 that the amount of the assessment or fee is proportionate
39 to the benefit or service received by that property or
40 person.

1 (c) If any action brought pursuant to subdivision (b)
2 is resolved in favor of a property owner, the court shall
3 award the prevailing property owner his or her court
4 costs and reasonable attorney fees.

5 55911. (a) Nothing in this part shall be construed to
6 limit or abrogate any existing constitutional or statutory
7 provision precluding the imposition by an agency of any
8 tax, fee, assessment, charge, or other levy in the absence
9 of approval by a two-thirds vote of the voters of that
10 agency.

11 (b) Nothing in this part shall be construed to authorize
12 the imposition of property taxes, assessments, or fees
13 under the guise of "excise" taxes, or taxes or assessments
14 on the privilege of owning property or the receipt of
15 public services, or to provide any new taxing, assessment,
16 or fee authority to any agency.

17 (c) This part shall be liberally construed in order to
18 further its purposes of providing limited charges and
19 assessments on real property in California and its
20 purposes of providing property owners with the right to
21 vote on any property-related assessment or fee.

22 (d) If any provision of this act or the application
23 thereof to any person or circumstances is held invalid,
24 that invalidity shall not affect other provisions or
25 applications of the act which can be given effect without
26 the invalid provision or application, and to this end the
27 provisions of this act are severable.

28 SEC. 2. Notwithstanding Section 17610 of the
29 Government Code, if the Commission on State Mandates
30 determines that this act contains costs mandated by the
31 state, reimbursement to local agencies and school
32 districts for those costs shall be made pursuant to Part 7
33 (commencing with Section 17500) of Division 4 of Title
34 2 of the Government Code. If the statewide cost of the
35 claim for reimbursement does not exceed one million
36 dollars (\$1,000,000), reimbursement shall be made from
37 the State Mandates Claims Fund. Notwithstanding
38 Section 17580 of the Government Code, unless otherwise
39 specified in this act, the provisions of this act shall become
40 operative on the same date that the act takes effect

SB 695

— 10 —

1 pursuant to the California Constitution.

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