

AMENDED IN SENATE APRIL 19, 2017

SENATE BILL

No. 231

Introduced by Senator Hertzberg

February 2, 2017

An act to amend Section 53750 of, and to add Section 53751 to, the Government Code, relating to local government finance.

LEGISLATIVE COUNSEL'S DIGEST

SB 231, as amended, Hertzberg. Local government: fees and charges.

Articles XIII C and XIII D of the California Constitution generally require that assessments, fees, and charges be submitted to property owners for approval or rejection after the provision of written notice and the holding of a public hearing. Existing law, the Proposition 218 Omnibus Implementation Act, prescribes specific procedures and parameters for local jurisdictions to comply with Articles XIII C and XIII D of the California Constitution and defines terms for these purposes.

This bill would define the term “sewer” for these purposes. The bill would also make findings and declarations relating to the definition of the term “sewer” for these purposes.

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

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

1 SECTION 1. Section 53750 of the Government Code is
2 amended to read:
3 53750. For purposes of Article XIII C and Article XIII D of
4 the California Constitution and this article, the following words

1 have the following meanings, and shall be read and interpreted in
2 light of the findings and declarations contained in Section 53751:

3 (a) “Agency” means any local government as defined in
4 subdivision (b) of Section 1 of Article XIII C of the California
5 Constitution.

6 (b) “Assessment” means any levy or charge by an agency upon
7 real property that is based upon the special benefit conferred upon
8 the real property by a public improvement or service, that is
9 imposed to pay the capital cost of the public improvement, the
10 maintenance and operation expenses of the public improvement,
11 or the cost of the service being provided. “Assessment” includes,
12 but is not limited to, “special assessment,” “benefit assessment,”
13 “maintenance assessment,” and “special assessment tax.”

14 (c) “District” means an area that is determined by an agency to
15 contain all of the parcels that will receive a special benefit from a
16 proposed public improvement or service.

17 (d) “Drainage system” means any system of public
18 improvements that is intended to provide for erosion control, for
19 landslide abatement, or for other types of water drainage.

20 (e) “Extended,” when applied to an existing tax or fee or charge,
21 means a decision by an agency to extend the stated effective period
22 for the tax or fee or charge, including, but not limited to,
23 amendment or removal of a sunset provision or expiration date.

24 (f) “Flood control” means any system of public improvements
25 that is intended to protect property from overflow by water.

26 (g) “Identified parcel” means a parcel of real property that an
27 agency has identified as having a special benefit conferred upon
28 it and upon which a proposed assessment is to be imposed, or a
29 parcel of real property upon which a proposed property-related
30 fee or charge is proposed to be imposed.

31 (h) (1) “Increased,” when applied to a tax, assessment, or
32 property-related fee or charge, means a decision by an agency that
33 does either of the following:

34 (A) Increases any applicable rate used to calculate the tax,
35 assessment, fee, or charge.

36 (B) Revises the methodology by which the tax, assessment, fee,
37 or charge is calculated, if that revision results in an increased
38 amount being levied on any person or parcel.

39 (2) A tax, fee, or charge is not deemed to be “increased” by an
40 agency action that does either or both of the following:

1 (A) Adjusts the amount of a tax, fee, or charge in accordance
2 with a schedule of adjustments, including a clearly defined formula
3 for inflation adjustment that was adopted by the agency prior to
4 November 6, 1996.

5 (B) Implements or collects a previously approved tax, fee, or
6 charge, so long as the rate is not increased beyond the level
7 previously approved by the agency, and the methodology
8 previously approved by the agency is not revised so as to result in
9 an increase in the amount being levied on any person or parcel.

10 (3) A tax, assessment, fee, or charge is not deemed to be
11 “increased” in the case in which the actual payments from a person
12 or property are higher than would have resulted when the agency
13 approved the tax, assessment, fee, or charge, if those higher
14 payments are attributable to events other than an increased rate or
15 revised methodology, such as a change in the density, intensity,
16 or nature of the use of land.

17 (i) “Notice by mail” means any notice required by Article XIII C
18 or XIII D of the California Constitution that is accomplished
19 through a mailing, postage prepaid, deposited in the United States
20 Postal Service and is deemed given when so deposited. Notice by
21 mail may be included in any other mailing to the record owner
22 that otherwise complies with Article XIII C or XIII D of the
23 California Constitution and this article, including, but not limited
24 to, the mailing of a bill for the collection of an assessment or a
25 property-related fee or charge.

26 (j) “Record owner” means the owner of a parcel whose name
27 and address appears on the last equalized secured property tax
28 assessment roll, or in the case of any public entity, the State of
29 California, or the United States, means the representative of that
30 public entity at the address of that entity known to the agency.

31 (k) “Sewer” ~~means services and systems provided by~~ *includes*
32 *systems*, all real estate, fixtures, and personal property owned,
33 controlled, operated, or managed in connection with or to facilitate
34 sewage collection, treatment, or disposition for sanitary or drainage
35 purposes, including lateral and connecting sewers, interceptors,
36 trunk and outfall lines, sanitary sewage treatment or disposal plants
37 or works, drains, conduits, outlets for surface or storm waters, and
38 any and all other works, property, or structures necessary or
39 convenient for the collection or disposal of sewage, industrial
40 waste, or surface or storm waters. “Sewer system” shall not include

1 a sewer system that merely collects sewage on the property of a
2 single owner.

3 (l) “Registered professional engineer” means an engineer
4 registered pursuant to the Professional Engineers Act (Chapter 7
5 (commencing with Section 6700) of Division 3 of the Business
6 and Professions Code).

7 (m) “Vector control” means any system of public improvements
8 or services that is intended to provide for the surveillance,
9 prevention, abatement, and control of vectors as defined in
10 subdivision (k) of Section 2002 of the Health and Safety Code and
11 a pest as defined in Section 5006 of the Food and Agricultural
12 Code.

13 (n) “Water” means any system of public improvements intended
14 to provide for the production, storage, supply, treatment, or
15 distribution of water from any source.

16 SEC. 2. Section 53751 is added to the Government Code, to
17 read:

18 53751. The Legislature finds and declares all of the following:

19 (a) The ongoing, historic drought has made clear that California
20 must invest in a 21st century water management system capable
21 of effectively meeting the economic, social, and environmental
22 needs of the state.

23 (b) Sufficient and reliable funding to pay for local water projects
24 is necessary to improve the state’s water infrastructure.

25 (c) Proposition 218 was approved by the voters at the November
26 5, 1996, statewide ~~General Election~~; *general election*. Some court
27 interpretations of the law have constrained important tools that
28 local governments need to manage storm water and drainage runoff.

29 (d) Storm waters are carried off in storm sewers, and careful
30 management is necessary to *ensure adequate state water supplies,*
31 *especially during drought, and to reduce pollution.* But a court
32 decision has ~~excluded~~ *found* storm water ~~from those~~ *subject to the*
33 *voter-approval* provisions of Proposition 218 that apply to
34 property-related ~~fees for sewer and water, fees,~~ preventing many
35 important projects from being built.

36 (e) The court of appeal in *Howard Jarvis Taxpayers Ass’n v.*
37 *City of Salinas* (2002) 98 Cal.App.4th 1351 concluded that the
38 term “sewer,” as used in Proposition 218, is “ambiguous” and
39 declined to use the statutory definition of the term “sewer system”

1 *system,*” which was part of the then-existing law as Section 230.5
2 of the Public Utilities Code.

3 (f) The court in *Howard Jarvis Taxpayers Ass’n v. City of*
4 *Salinas* (2002) 98 Cal.App.4th 1351 failed to follow long-standing
5 principles of statutory construction by disregarding the plain
6 meaning of the term “sewer.” Courts have long held that statutory
7 construction rules apply to initiative measures, including in cases
8 that apply specifically to Proposition 218 (see *People v. Bustamante*
9 ~~(1996)~~ (1997) 57 Cal.App.4th 693, 693; *Keller v. Chowchilla*
10 *Water Dist.* (2000) 80 Cal.App.4th 1006). When construing
11 statutes, courts look first to the words of the statute, which should
12 be given their usual, ordinary, and commonsense meaning (*People*
13 *v. Mejia* (2012) 211 Cal.App.4th 586, 611). The purpose of
14 utilizing the plain meaning of statutory language is to spare the
15 courts the necessity of trying to divine the voters’ intent by
16 resorting to secondary or subjective indicators. The court in
17 *Howard Jarvis Taxpayers Ass’n v. City of Salinas* (2002) 98
18 Cal.App.4th 1351 asserted its belief as to what most voters thought
19 when voting for Proposition 218, but did not cite the voter pamphlet
20 or other accepted sources for determining legislative intent. Instead,
21 the court substituted its own judgment for the judgment of voters.

22 (g) *Neither the words “sanitary” nor “sewerage” are used in*
23 *Proposition 218, and the common meaning of the term “sewer*
24 *services” is not “sanitary sewerage.” In fact, the phrase “sanitary*
25 *sewerage” is uncommon.*

26 (h) *Proposition 218 exempts sewer and water services from the*
27 *voter-approval requirement. Sewer and water services are*
28 *commonly considered to have a broad reach, encompassing the*
29 *provision of clean water and then addressing the conveyance and*
30 *treatment of dirty water, whether that water is rendered unclean*
31 *by coming into contact with sewage or by flowing over the built-out*
32 *human environment and becoming urban runoff.*

33 ~~(g)~~

34 (i) Numerous sources predating Proposition 218 reject the notion
35 that the term “sewer” applies only to sanitary-sewers, *sewers and*
36 *sanitary sewerage*, including, but not limited to:

37 (1) Section 230.5 of the Public Utilities Code. *Code, added by*
38 *Chapter 1109 of the Statutes of 1970.*

39 (2) Section 23010.3, which was first added by Chapter 1193 of
40 the Statutes of 1963.

1 (3) ~~The Street Improvement Act of 1913 (repealed by Chapter~~
 2 ~~346 of the Statutes of 1963): 1913.~~

3 (4) ~~The California Supreme Court stated in Los Angeles-L.A.~~
 4 ~~County Flood Control District *Dist. v. Southern California Cal.*~~
 5 ~~Edison Co. (1958) 51 Cal.2d 331, where the California Supreme~~
 6 ~~Court stated that “no distinction has been made between sanitary~~
 7 ~~sewers and storm drains or sewers.”~~

8 (5) ~~The term, Many other cases where the term “sewer” has~~
 9 ~~been used interchangeably to refer to both sanitary and storm~~
 10 ~~sewers in many other cases, including, include, but are not limited~~
 11 ~~to, County of Riverside v. Whitlock (1972) 22 Cal.App.3d 863,~~
 12 ~~Ramseier v. Oakley Sanitary Dist. (1961) 197 Cal.App.2d 722,~~
 13 ~~and Torson v. Fleming (1928) 91 Cal.App. 168.~~

14 (6) Dictionary definitions of sewer, which courts have found to
 15 be an objective source for determining common or ordinary
 16 meaning, including ~~Websters~~ *Webster’s* (1976), American Heritage
 17 (1969), and Oxford English Dictionary (1971).

18 (h)

19 (j) Prior legislation has affirmed particular interpretations of
 20 words in Proposition 218, specifically Assembly Bill 2403 of the
 21 2013–14 Regular Session (Chapter 78 of the Statutes of 2014).

22 (k) *In Crawley v. Alameda Waste Management Authority (2015)*
 23 *243 Cal.App.4th 396, the Court of Appeal relied on the statutory*
 24 *definition of “refuse collection services” to interpret the meaning*
 25 *of that phrase in Proposition 218, and found that this interpretation*
 26 *was further supported by the plain meaning of refuse. Consistent*
 27 *with this decision, in determining the definition of “sewer,” the*
 28 *plain meaning rule shall apply in conjunction with the definitions*
 29 *of terms as provided in Section 53750.*

30 (i)

31 (l) The Legislature reaffirms and reiterates that the definition
 32 found in Section 230.5 of the Public Utilities Code is the definition
 33 of “sewer” or “sewer service” that should be used in the Proposition
 34 218 Omnibus Implementation Act.

35 (m) *Courts have read the Legislature’s definition of “water”*
 36 *in the Proposition 218 Omnibus Implementation Act to include*
 37 *related services. In Griffith v. Pajaro Valley Water Management*
 38 *Agency (2013) 220 Cal.App.4th 586, the Court of Appeal concurred*
 39 *with the Legislature’s view that “water service means more than*
 40 *just supplying water,” based upon the definition of water provided*

1 *by the Proposition 218 Omnibus Implementation Act, and found*
2 *that actions necessary to provide water can be funded through*
3 *fees for water service. Consistent with this decision, “sewer”*
4 *should be interpreted to include services necessary to collect, treat,*
5 *or dispose of sewage, industrial waste, or surface or storm waters,*
6 *and any entity that collects, treats, or disposes of any of these*
7 *necessarily provides sewer service.*

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