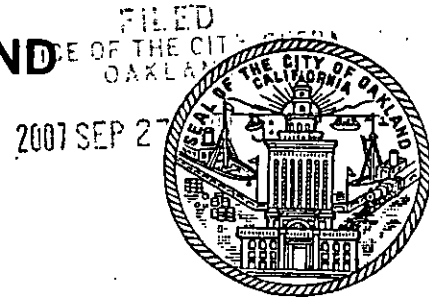


CITY OF OAKLAND
BILL ANALYSIS



Date: October 2, 2007

Bill Number: SCA 12

Stormwater Fee Constitutional Amendment

Bill Author: Senators Torlakson and Yee

DEPARTMENT INFORMATION

Contact: Lesley Estes

Department: CEDA

Telephone: 238-7431 **FAX #** 238-7286 **E-mail:** lcestes@oaklandnet.com

RECOMMENDED POSITION: (SUPPORT, SUPPORT IF AMENDED, NEUTRAL, WATCH, OPPOSE, NOT RELEVANT)

SUPPORT

Staff recommends strong support for this legislation

Summary of the Bill

This constitutional amendment adds stormwater to the exceptions to Proposition 218 2/3rd voting requirements for new fees.

Positive Factors for Oakland

The City has no funding source for stormwater drainage management, capital improvements or stormwater quality programs. Staff estimate that \$12 to \$14 million annually is needed currently to implement a stormwater program that meets infrastructure, maintenance and regulatory requirements. Additionally, in the next two years the City will be subject to significant new stormwater regulations including a new municipal National Pollutant Discharge Elimination System Permit (NPDES) and new Statewide Stream and Wetland regulations. It will be essential for the City to create additional funding resources in order for the City to meet storm drainage needs and to comply with stormwater regulatory mandates.

This constitutional amendment will allow the City of Oakland to consider a stormwater fee without having to meet the more rigorous 2/3rds voting process.

Negative Factors for Oakland

None

Item: _____
City Council
October 02, 2007

PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:

- Critical** (top priority for City lobbyist, city position required ASAP)
 Very Important (priority for City lobbyist, city position necessary)
 Somewhat Important (City position desirable if time and resources are available)
 Minimal or **None** (do not review with City Council, position not required)

Known support:

California Association of Stormwater Associations,
League of California Cities

Known Opposition:

Howard Jarvis Taxpayers Association


Attach bill text and state/federal legislative committee analysis, if available.

Respectfully Submitted,



Claudia Cappio
Development Director
Community & Economic Development Agency

Approved for Forwarding to
City Council



Office of City Administrator

Item: _____
City Council
October 02, 2007

BILL NUMBER: SCA 12 AMENDED
BILL TEXT

AMENDED IN SENATE JUNE 18, 2007

INTRODUCED BY Senators Torlakson and Yee
(Coauthor: Senator Kuehl
)

MAY 21, 2007

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 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: 2/3. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

Resolved by the Senate, the Assembly concurring, That the Legislature of the State of California at its 2007-08 Regular Session commencing on the fourth day of December 2006, two-thirds of the membership of each house concurring, hereby proposes to the people of the State of California, that the Constitution of the State be amended as follows:

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

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

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

(2) The agency shall conduct a public hearing upon the proposed

fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners of each identified parcel upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.

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

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

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

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

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

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

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

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

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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SCA 12

Page

2

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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SCA 12

Page

3

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 7/12/07)

Association of California Water Agencies
Barbara Pierce, Mayor, Redwood City
Bay Area Stormwater Management Agencies Association
California Association of Environmental Health
Administrators
California Coastal Coalition
California Coastkeeper Alliance
California Special Districts Association
California State Association of Counties
City and County Association of Governments, San Mateo
City of Burlingame
City of Camarillo
City of Chula Vista
City of Concord
City of Coronado
City of Covina
City of Eureka
City of Fremont
City of Livermore

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SCA 12
Page

4

City of Lompoc
City of Los Angeles
City of Manteca
City of Martinez
City of Millbrae
City of Moorpark
City of Moreno Valley

City of Palo Alto
City of Redwood City
City of Roseville
City of San Leandro
City of San Pablo
City of Santa Monica
City of Saratoga
City of Signal Hill
City of Sunnyvale
City of Thousand Oaks
City of Walnut Creek
City of Woodland
Contra Costa County
Friends of the Santa Clara River
Heal the Bay
Inland Empire Waterkeeper
Irvine Ranch Water District
Lake County Board of Supervisors
League of California Cities
Ocean Conservation Society
San Joaquin County
San Luis Obispo Coastkeeper
Santa Clara County
Santa Clara County Water District
Santa Cruz County
Save the Bay
South Bay Cities Council of Governments
The River Project
Town of Los Gatos
Ventura Countywide Stormwater Quality Management Program

OPPOSITION : (Verified 7/12/07)

California Taxpayers' Association
Howard Jarvis Taxpayers Association

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SCA 12
Page

5

AGB:mw 7/13/07 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

