

Assembly Bill No. 2257

CHAPTER 561

An act to add Sections 53759.1 and 53759.2 to the Government Code, relating to local government.

[Approved by Governor September 25, 2024. Filed with
Secretary of State September 25, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2257, Wilson. Local government: property-related water and sewer fees and assessments: remedies.

The California Constitution specifies various requirements with respect to the levying of assessments and property-related fees and charges by a local agency, including notice, hearing, and protest procedures, depending on the character of the assessment, fee, or charge.

Existing law, known as the Proposition 218 Omnibus Implementation Act, prescribes specific procedures and parameters for local jurisdictions to comply with these requirements.

This bill would prohibit, if a local agency complies with specified procedures, a person or entity from bringing a judicial action or proceeding alleging noncompliance with the constitutional provisions for any new, increased, or extended fee or assessment, as defined, unless that person or entity has timely submitted to the local agency a written objection to that fee or assessment that specifies the grounds for alleging noncompliance, as specified.

This bill would provide that local agency responses to the timely submitted written objections shall go to the weight of the evidence supporting the agency's compliance with the substantive limitations on fees and assessments imposed by the constitutional provisions. The bill would also prohibit an independent cause of action as to the adequacy of the local agency's responses.

This bill would, if the local agency complies with the specified procedures, provide that in any judicial action or proceeding to review, invalidate, challenge, set aside, rescind, void, or annul the fee or assessment for failure to comply with the procedural and substantive requirements of specified constitutional provisions in the fee or assessment setting process, the court's review is limited to a record of proceedings containing specified documents, except as otherwise provided. The bill would provide that this limitation does not preclude any civil action related to a local agency's failure to implement a fee or assessment in compliance with the manner adopted by the local agency. The bill would make related findings and declarations.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The purpose of this act is to create an exhaustion of administrative remedies procedure that, if a local agency chooses to implement it, requires ratepayers to bring an objection regarding a proposed property-related water or sewer fee or charge, or any special assessment to the local public agency governing body's attention prior to the deadline established by the local public agency as part of the rate or assessment consideration process. The purpose of the act is also to provide an opportunity for the local public agency to address or resolve the objection or objections before its governing body makes a final decision on whether to establish a new, or amend a current, property-related fee or special assessment pursuant to Proposition 218.

(b) The procedure created by this act is intended to provide a meaningful opportunity for a ratepayer to present an objection to a proposed new or amended property-related water or sewer fee or charge, or any special assessment, and allow the local agency the opportunity to resolve the objection, before resorting to litigation after the new or amended rate or special assessment is approved (see *Plantier v. Ramona Municipal Water Dist.* (2019) 7 Cal.5th 372, 383). Even if such an objection is not fully resolved, the local agency considering and responding to the objection can narrow the dispute and will create a better evidentiary record for court review in deciding any later litigation (see *id.*).

(c) This act establishes a "clearly defined machinery for the submission, evaluation, and resolution of complaints by aggrieved parties" (see *Plantier v. Ramona Municipal Water Dist.*, *supra*, 7 Cal.5th at p. 384, citing *Rosenfield v. Malcom* (1967) 65 Cal.2d 559, 566).

SEC. 2. Section 53759.1 is added to the Government Code, to read:

53759.1. (a) For purposes of this section, the following definitions apply:

(1) "Exhaustion of remedies requirement" means the written objection requirement under subdivision (b).

(2) "Fee or assessment" means the amount of any property-related water or sewer fee or charge, or any special assessment levied or the methodology used to develop and levy the fee, charge, or assessment.

(3) "Sewer" includes systems, all real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate sewage collection, treatment, or disposition for sanitary or drainage purposes, including lateral and connecting sewers, interceptors, trunk and outfall lines, sanitary sewage treatment or disposal plants or works, drains, conduits, outlets for surface or storm waters, and any and all other works, property, or structures necessary or convenient for the collection or disposal of sewage, industrial waste, or surface or storm waters. "Sewer system" shall not include a sewer system that merely collects sewage on the property of a single owner.

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

(b) For purposes of any fee or assessment adopted by a local agency pursuant to Section 4 or 6 of Article XIII D of the California Constitution, if the local agency complies with the procedures described in subdivision (c), a person or entity shall be prohibited from bringing a judicial action or proceeding alleging noncompliance with Article XIII D of the California Constitution for any new, increased, or extended fee or assessment, unless that person or entity has timely submitted to the local agency a written objection to that fee or assessment that specifies the grounds for alleging noncompliance.

(c) The exhaustion of remedies requirement authorized by subdivision (b) applies only if the local agency does all of the following:

(1) Makes available to the public a proposed fee or assessment no less than 45 days prior to the deadline for a ratepayer to submit an objection, as established by the local agency pursuant to paragraph (4).

(2) Posts on its internet website a written basis for the fee or assessment and includes a link to the internet website in the written notice, sent pursuant to subdivision (c) of Section 4 or paragraph (1) of subdivision (a) of Section 6 of Article XIII D of the California Constitution.

(3) Mails the written basis described in paragraph (2) to a property owner upon request.

(4) Provides at least 45 days for a property owner to review the proposed fee or assessment and to timely submit to the local agency a written objection to that fee or assessment that specifies the grounds for alleging noncompliance. To be considered timely, any written objection shall be submitted by a deadline established by the local agency, which shall be no less than 45 days after notice is provided pursuant to subdivision (c) of Section 4 or paragraph (1) of subdivision (a) of Section 6 of Article XIII D of the California Constitution, as applicable.

(5) Considers and responds in writing, including the grounds for which a challenge is not resulting in amendments to the proposed fee or assessment, to any timely submitted written objections prior to the close of the protest hearing or ballot tabulation hearing required under Section 4 or 6 of Article XIII D of the California Constitution. The agency’s response shall explain the substantive basis for retaining or altering the proposed fee or assessment in response to the written objection. Timely submitted written objections and agency responses required by this subdivision shall be presented to the local agency’s governing body for consideration prior to or during a protest hearing or ballot tabulation hearing required under Section 4 or 6 of Article XIII D of the California Constitution.

(6) Includes in the written notice, sent pursuant to subdivision (c) of Section 4 or paragraph (1) of subdivision (a) of Section 6 of Article XIII D of the California Constitution, a prominently displayed statement that contains the following information:

(A) That all written objections must be submitted within the written objection period set by the local agency pursuant to paragraph (4) and that a failure to timely object in writing bars any right to challenge that fee or assessment through a legal proceeding.

(B) All substantive and procedural requirements for submitting an objection to the proposed fee or assessment.

(7) Completes the procedures described in paragraphs (1) to (6), inclusive, prior to the completion of the protest hearing and ballot tabulating hearing required by Section 4 or 6 of Article XIII D of the California Constitution.

(d) The local agency's governing body, in exercising its legislative discretion, shall determine any of the following:

(1) Whether the written objections and the agency's response warrant clarifications to the proposed fee or assessment.

(2) Whether to reduce the proposed fee or assessment.

(3) Whether to further review before making a determination on whether clarification or reduction is needed.

(4) Whether to proceed with the protest hearing or ballot tabulation hearing required under Section 4 or 6 of Article XIII D of the California Constitution.

(e) The local agency's response to timely submitted written objections, as required under paragraph (5) of subdivision (c), shall go to the weight of the evidence supporting the agency's compliance with the substantive limitations on fees and assessments imposed by Section 4 or 6 of Article XIII D of the California Constitution. There shall be no independent cause of action as to the adequacy of a local agency's response pursuant to paragraph (5) of subdivision (c).

SEC. 3. Section 53759.2 is added to the Government Code, to read:

53759.2. (a) For purposes of this section, "fee or assessment" means any property-related water or sewer fee or charge, or any special assessment levied or the methodology used to develop and levy the fee, charge, or assessment.

(b) Notwithstanding any law, if a local agency adopts a fee or assessment and complies with subdivision (c) of Section 53759.1, any judicial action or proceeding to review, invalidate, challenge, set aside, rescind, void, or annul the fee or assessment for failure to comply with the procedural and substantive requirements of Section 4 or 6 of Article XIII D of the California Constitution in the fee or assessment setting process shall be subject to the following requirements:

(1) Except as provided in paragraph (2), the court's review shall be limited to the record of proceedings before the local agency for that fee or assessment as follows:

(A) Any cost-of-service or rate study or report, any engineer's report, agency staff reports, and related documents prepared by the local agency with respect to the fee or assessment.

(B) Any transcript or minutes of the proceedings at which the decisionmaking body of the local agency heard testimony or public comment on the fee or assessment, and any transcript or minutes of the proceedings

before any advisory body to the local agency that were presented to the decisionmaking body before action on the fee or assessment.

(C) All notices issued by the local agency for purposes of complying with subdivision (c) of Section 53759.1, to comply with the requirements of Section 4 or 6 of Article XIII D of the California Constitution, or with any other law requiring notice.

(D) All timely submitted written objections and any local agency responses to those objections made pursuant to Section 53759.1.

(E) All written evidence or correspondence related to the fee or assessment submitted to, or transmitted from, the local agency prior to the completion of the protest hearing or ballot tabulation hearing required under Section 4 or 6 of Article XIII D of the California Constitution.

(F) Documentation of the local agency's final decision on the fee or assessment, including any ordinance, resolution, rule, regulation, meeting minutes, or other record of the local agency's decision.

(G) All protests, ballots, and records of the tabulation, protests, or ballots made in connection with the fee or assessment.

(H) All written evidence or documentation supporting the fee or assessment in the local agency's files prior to completion of the protest hearing or ballot tabulation hearing required under Section 4 or 6 of Article XIII D of the California Constitution.

(2) Evidence outside the record of proceedings before the local agency may be admitted under the following circumstances:

(A) Where the evidence is relevant to issues other than the validity of the fee or assessment, such as a petitioner's standing and capacity to sue.

(B) Where the evidence is relevant to affirmative defenses, including, but not limited to, laches, estoppel, and res judicata.

(C) Where the evidence is relevant to the accuracy and completeness of the administrative record certified by the local agency.

(D) Where the evidence is relevant to the local agency's compliance with the procedures set forth in subdivision (c) of Section 53759.1.

(E) Where the evidence is necessary to explain information in the administrative record on the issue of compliance with Section 4 or subdivision (a) of Section 6 of Article XIII D of the California Constitution.

(c) Nothing in this section shall preclude any civil action related to a local agency's failure to implement a fee or assessment in compliance with the manner adopted by the local agency.