

WHAT WOULD PROPOSITION 218 MEAN FOR CALIFORNIA?

INTRODUCTION

Proposition 218, the Howard Jarvis Taxpayers Association's "Right to Vote on Taxes Act," is a constitutional initiative that would change how California local governments impose taxes, fees, and assessments. In general, the measure makes it more difficult for local governments -- including cities, counties, special districts, and school districts -- to raise revenues. The measure accomplishes this by requiring, in most cases, voter approval of new or increased taxes, fees, and assessments and restricting the purposes for which fees and assessments may be levied.

TAXES

Voter Approval Of Taxes

Current law: Most new taxes levied by local governments in California must receive voter approval. The state Constitution requires that special taxes, defined as those levied by local government to fund particular activities or programs, be approved by a two-thirds vote of the electorate. In 1986, voters approved Proposition 62, a statutory initiative requiring majority voter approval of new general taxes imposed by local government. A California appellate court decision ruled the vote requirement unconstitutional, but in 1995 the state Supreme Court overruled that decision and held that the vote requirement is permissible.¹ As a result, counties and most cities must already submit new or increased taxes to the voters for approval. However, it is unclear whether Proposition 62 applies to the state's 89 charter cities, since the state Constitution grants charter cities authority over their municipal affairs.

Proposition 218 requires all local governments to gain majority voter approval for any new or increased general taxes. By amending the Constitution, rather than a statute, Proposition 218 extends the general tax vote requirement to charter cities, including most of the state's largest cities. The measure also requires local governments to submit any new general tax or tax increase imposed since January 1, 1995 to the voters for approval within two years. Proposition 218 reiterates the current requirement that special taxes receive two-thirds voter approval.

Impact: Local governments that imposed or increased taxes without voter approval in 1995 or 1996 would experience revenue reductions if voters reject these existing taxes at the polls. It is unknown at this time exactly how many dollars would be at risk.

¹ *Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal. 4th 220; 902 P.2d 225; 45 Cal. Rptr. 2d 207.

Who Can Levy A General Tax?

Current Law: The state Constitution requires special taxes, any tax for a designated purpose, to be approved by two-thirds of the voters. State law does not specify what types of local agencies can levy general taxes and what type can levy special taxes. However, a series of court decisions suggests that special purpose jurisdictions can only levy special taxes.

Proposition 218 restricts the use of general taxes, which require majority voter approval, to general purpose governments. School districts are specifically precluded from levying a general tax.

Impact: Any tax increased or imposed by a school district would require two-thirds voter approval, along with any tax imposed by other local agencies for a designated purpose.

ASSESSMENTS

Defining “Special Benefits to Property”

Current law: California has 34 statutory acts governing the use of benefit assessments. The acts allow assessments for particular activities, ranging from street paving to downtown business promotion. The amount paid by each parcel must be based on the benefit received. However, case law allows an expansive interpretation of this requirement. Generally speaking, an assessment is not a special tax, and therefore does not require a two-thirds vote of the electorate.²

Proposition 218 tightens the required relationship between assessment-funded activities and the benefit conferred on property. Agencies considering levying an assessment would have to determine the proportionate special benefit to each parcel. The amount of assessment on any parcel could not exceed “the reasonable cost of the proportional special benefit conferred on that parcel.” The measure also requires agencies to separate “special benefits” from “general benefits” to the community as a whole. Only the “special benefits” to property owners could be funded using assessments. The remainder must be funded in some other way. Local governments are required to prepare detailed engineer’s reports to differentiate between “special” and “general” benefits.

Proposition 218 also narrows the definition of “special benefits to property” to exclude enhanced property values brought about as a result of a public improvement.

Impact: By prohibiting the use of assessments to fund activities that provide general benefits, local governments may be prevented from recovering the full cost of an activity through assessments. Many services that benefit property also provide some benefit to the general public. In such cases, governments might have to divert general fund money to the service or choose not to provide the service at all.

Proposition 218’s requirement to identify and separate the “general” and “special” benefits sets a standard well beyond current practice. In most cases, clearly distinguishing general benefits from special benefits, and determining the proportionate costs of each, is virtually impossible.

² Knox v. City of Orland (1992) 4 Cal. 4th 132; 14 Cal. Rptr. 2d 159; 841 P. 2d 144.

Notification Requirements

Current law: Local governments must inform property owners of proposed assessments and allow testimony at a public hearing before the assessment is adopted. Agencies must send written notice of a proposed benefit assessment to property owners 45 days in advance of a scheduled public hearing. The notice must include information on the estimated amount of assessment per parcel, the purpose of the assessment, and the date, time, and location of the public hearing on the proposed assessment.

Proposition 218 establishes a constitutional public notice requirement similar to the existing statutory provisions.

Impact: Proposition 218 sets out detailed rules for local governments to follow in levying or increasing fees and assessments. These matters traditionally have been addressed by statute, rather than by the state Constitution. As new needs and concerns emerged, the Legislature has adjusted existing laws accordingly. In 1992, for example, legislative amendments to the Brown Act strengthened the public notice requirements for proposed assessments.

As part of the Constitution, Proposition 218's notice requirements and other provisions would be very difficult to change. Any modification would require voter approval of a statewide measure.

Majority Protest Provisions

Current law: The authorization acts for benefit assessments include a wide range of provisions related to voter approval and property owner protest. A few types of assessments require vote approval, others require an election only if a certain percentage of property owners protest. Most proposed assessments must be abandoned if a majority of affected property owners protest, although in some cases the governing body can override the majority protest with a four-fifths vote. Current law defines "majority protest" in several ways, depending on the type of assessment.

Proposition 218 replaces the various existing majority-protest and vote provisions with a standard election procedure for all assessments. The ability to vote is restricted to property owners and is based on the percentage of the assessment each property owner would pay.³ For example, if one parcel would pay 40 percent of the total amount assessed, the ballot cast by the owner of that parcel would count as 40 percent of the total vote. Proposition 218 prohibits imposition of an assessment if the votes submitted in opposition to an assessment exceed ballots in favor of it. This is a substantially lower threshold for blocking an assessment than the existing "majority protest" provisions, which require an absolute majority of all affected properties, not simply a majority of those who take the time to return their ballots.

If the courts determine that restricting the vote to property owners violates the voting rights of citizens who do not own property, Proposition 218 requires local governments to gain a two-thirds approval of the electorate residing in the proposed assessment district *in addition to* a majority vote of property owners.

³ Renters, who may bear part of the burden through increased rent, would not have a vote.

Proposition 218 requires local governments to bring all existing assessments into compliance with the rules set forth in the initiative by July 1, 1997, except for: assessments imposed for sidewalks, streets, sewers, water, flood control, drainage systems, and vector control; those that have already been approved by a majority of property owners or voters; those established by petition of all affected property owners; or those whose proceeds are used exclusively to repay bonded indebtedness. The Legislative Analyst estimates that more than half of all existing assessments would be exempt from the measure's requirements.

Impact: The Legislative Analyst estimates a local government's revenue loss potentially exceeding \$100 million annually if Proposition 218 passes, due to the reduction or repeal of existing assessments and fees that do not meet the measure's requirements. Revenues for services such as fire protection, parks and recreation, ambulance, and business-area improvement programs are most likely to be affected by Proposition 218.

Local governments' administrative costs would increase due to several factors: the detailed procedures required to justify assessment and fee amounts, holding additional elections, and increased litigation. The exact increase in governments' costs is unknown. However, the Legislative Analyst estimates that costs could exceed \$10 million in the first year and less in succeeding years.

FEES

Restrictions On Use Of Fees

Current law: Local governments charge fees for many services, such as garbage collection and sewer service. The revenues raised by a fee cannot exceed the reasonable cost of providing the service funded by the fees and fee revenue cannot be used for an unrelated purpose.⁴ Governments often set fee rates based on the estimated cost of providing services to different types of parcels (such as residential, commercial, or industrial). Agencies that provide water or sewer services can levy "standby" or "availability" charges to finance water or sewer system expansions to new households and businesses.

Proposition 218 prohibits local governments from imposing fees on property owners for services that are available to the public at large in substantially the same manner as they are to property owners, such as police, fire, and library services. The measure requires the amount of a fee charged to each parcel not to exceed the proportionate cost of providing service to that parcel. The measure also only allows imposition of fees if the service is actually used by, or immediately available to, the owner of the property. All standby charges are reclassified as assessments.

All existing fees will have to comply with these requirements by July 1, 1997.

Impact: Local governments would face the potential loss of millions of dollars of existing fee revenue since they would have to reduce or eliminate fees that cannot meet the measure's requirements. In addition, certain fees would need to be recalculated on a parcel-by-parcel basis, which would add to governments' administrative costs.

Local governments that provide utility services sometimes structure their rates so that regular clients subsidize service to low income clients ("lifeline" rates). Such an arrangement may be prohibited under

⁴ Government Code, Sec. 50076.

Proposition 218's requirement that the fee charged to a parcel not exceed the cost of providing service to that parcel. Rate structures designed to encourage conservation could also be in jeopardy. The measure may prevent local governments from accumulating funds for future capital expansion or engaging in long-range financial strategies to prevent sudden rate increases.

Public Notice Requirements

Current law: In order to impose a new fee or increase an existing fee, local government must place at least two newspaper advertisements at least ten days prior to a public hearing on the proposed fee.

Proposition 218 requires that property owners receive written notice of proposed fees, similar to the initiative's notice requirements for assessments, 45 days in advance of a public hearing on the fee.

Impact: Local governments would incur extra costs for mailing information to all affected property owners, rather than placing newspaper advertisements.

Majority Protest And Vote Requirements

Current law: Imposition of fees by local government is not generally subject to a formal protest process. Standby charges, however, can be postponed if owners representing 40 percent of the affected parcels protest. Local governments face no statutory requirements to put fees to a public vote, unless fee revenue exceeds the reasonable cost of the service provided.

Proposition 218 prohibits local governments from imposing any new or increased fee if a majority of all owners of affected parcels protest the fee in writing. In addition to the majority protest provision, the initiative requires any new or increased fees for property-related services -- except for sewer, water, or refuse collection service -- to be approved by either a majority vote of affected property owners or two-thirds of the voters residing in the affected area. The election must be held at least 45 days after a public hearing on the issue.

The measure specifically exempts two types of fees from the above vote requirements: developer fees and timber yield fees. It also exempts fees for gas or electrical service.

Impact: Local governments may impose higher fees on developers to make up for revenues lost through other types of fees or assessments.

OTHER PROVISIONS

Publicly Owned Property To Pay Assessments

Current law: Public agencies such as schools, local governments, and the state generally do not pay benefit assessments.

Proposition 218 requires all government agencies, including schools, colleges, universities, cities, counties, and other public agencies, to pay property assessments unless they can show that their properties receive no special benefit.

Impact: The Legislative Analyst estimates that this provision could increase the costs of local governments by more than \$10 million a year, although the exact amount is not known. Local

governments would also assume the costs of recalculating existing assessments. The amount paid by private property owners would be reduced to reflect the amount paid by public agencies. However, governments' cost of providing services would increase by the amount of the assessments they are required to pay. This provision would result in the transfer of funds from one level of government to another. For example, school districts could be required to pay assessments to the city or a special district where they are located. While Proposition 218 specifies that property owned by the federal government shall be subject to assessments, states cannot compel the federal government to pay.

Initiative Power To Repeal Taxes, Fees, And Assessments

Current law: The state Constitution prohibits initiatives to repeal or alter taxes imposed by the governing body of a public agency. This provision allows the state and local governments to make binding financial decisions without the threat of voters repealing a revenue source at any time.

Proposition 62 required local governments to gain voter approval of all existing general taxes imposed without a vote after September 30, 1985. This provision has been the subject of conflicting court decisions. The Court of Appeal in City of Westminster v. County of Orange (1988) struck down that provision as an unconstitutional referendum on a tax and described it as a “gross interference with the fiscal responsibility of local governments.”⁵ Another appellate decision, City of Woodlake v. Logan (1991) struck down the vote requirement for new general taxes, finding that that requirement also had the effect of imposing an unconstitutional referendum.⁶

More recently, the state Supreme Court ruled in Santa Clara Transportation Authority v. Guardino that vote requirements for new taxes are constitutionally permissible. The court also found that the rationale for prohibiting referendums on existing taxes is not relevant to new taxes, because local governments know in advance that they need voter approval and can plan accordingly. The Guardino court overruled the Woodlake decision but did not address the correctness of the Westminster decision forbidding votes on existing taxes.

Proposition 218 gives voters the power to reduce or repeal any existing local tax, assessment, fee, or charge through the initiative process.

Impact: The restrictions on assessments and the provision allowing voters to repeal taxes, assessments, and fees could affect the ability of local government to repay outstanding debt or meet other contractual obligations.

Burden Of Proof

Current law: A party challenging the validity of a fee or assessment carries the burden of proof to show that the fee or assessment does not meet existing legal criteria.

Proposition 218 shifts the burden of proof to the government agency levying the fee or assessment. The agency would have to show that the challenged fee or assessment meets the legal requirements set forth in this initiative.

Liberal Construction

⁵ City of Westminster v. County of Orange (1988) 204 Cal. App. 3d 623; 251 Cal. Rptr. 511.

⁶ City of Woodlake v. Logan (1991) 230 Cal.App.3d 1058; 282 Cal. Rptr. 27.

Proposition 218 requires courts to interpret its various provisions liberally, in order to fulfill its purposes of “limiting local government revenue and enhancing taxpayer consent.”

ARGUMENTS IN FAVOR AND IN OPPOSITION

In Favor

The proponents of Proposition 218 argue that local governments have been getting around existing tax restrictions by labeling de facto taxes as “assessments” or “fees.” This proposition will therefore guarantee property owners’ right to vote on all taxes, no matter what they are called, and will limit the ability of governments to exact revenue from citizens “without their consent.” Proponents argue that Proposition 218 promotes democracy by allowing “those who pay assessments to decide if what they are being asked to pay for is worth the cost.”⁷

The measure does not prevent governments from spending money on particular services, because governments always have the option of raising taxes — as long as they can convince voters that the tax increase is necessary.

In Opposition

Opponents of Proposition 218 argue that it will harm democracy by putting decision-making power in the hands of large commercial landowners and developers through the weighted vote requirement, while denying voting rights to those who do not own property. Opponents claim that the measure reduces or eliminates important funding sources for activities such as police, fire, ambulance, and library services. Opponents argue that the provision requiring public agencies to pay their share of assessments will hurt schools, resulting in millions of dollars being diverted from classrooms.⁸ Opponents maintain that voters already give or deny consent through the process of electing officials to make revenue decisions on their behalf.

Proposition 218 may actually reduce property owner discretion over fees and assessments, by prohibiting outright certain uses of these revenue sources. Even if landowners unanimously petition for a new assessment to fully fund a local improvement that provides some general benefit, the Constitution may forbid all or part of that assessment.

FISCAL IMPACT ON CALIFORNIA

If Proposition 218 passes, the Legislative Analyst estimates a short-term reduction of local government revenues of more than \$100 million per year. Over time, the gap between actual and potential revenues could grow to several hundred million dollars annually. This revenue loss would likely lead to reductions in spending for local services. At the same time, governments’ administrative costs would increase in order to comply with the measure’s requirements.

⁷ “Argument in Favor of Proposition 218,” from the on-line voter’s guide, Office of the Secretary of State.

⁸ “Argument Against Proposition 218,” from the on-line voter’s guide, Office of the Secretary of State.