

AMENDED IN ASSEMBLY JULY 27, 2020

AMENDED IN SENATE APRIL 1, 2020

SENATE BILL

No. 1386

Introduced by Senator Moorlach

February 21, 2020

An act to amend Section 53750 of, and to add Section 53750.5 to, to the Government Code, relating to local government finance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1386, as amended, Moorlach. Local government: assessments, fees, and charges: ~~water~~. *water: hydrants*.

The California Constitution specifies various requirements with respect to the levying of assessments and property-related fees and charges by a local agency, including requiring that the local agency provide public notice and a majority protest procedure in the case of assessments and submit property-related fees and charges for approval by property owners subject to the fee or charge or the electorate residing in the affected area following a public hearing.

Existing law, known as the Proposition 218 Omnibus Implementation Act, prescribes specific procedures and parameters for local jurisdictions to comply with these requirements and, among other things, authorizes an agency providing water, wastewater, sewer, or refuse collection services to adopt a schedule of fees or charges authorizing automatic adjustments that pass through increases in wholesale charges for water, sewage treatment, or wastewater treatment or adjustments for inflation under certain circumstances. Existing law defines, among other terms, the term "water" for these purposes to mean any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water from any source.

This bill would specify that *hydrants, as defined, are part of the system of public improvements included in the definition of “water”* for purposes of the Proposition 218 Omnibus Implementation Act also includes the public fixtures, appliances, and appurtenances connected to an above-described system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water from any source. *Act.* The bill would specify that a property-related water service fee or charge by a local agency may include the costs to construct, maintain, repair, or replace public hydrants attached to a water system, and the cost of water dispensed through public hydrants, to the extent those fees or charges are consistent with the California Constitution. *hydrants to comply with fire codes and industry standards, and may include the cost of water distributed through hydrants.*

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~~
- 5 ~~have the following meanings, and shall be read and interpreted in~~
- 6 ~~light of the findings and declarations contained in Section 53751:~~
- 7 (a) ~~“Agency” means any local government as defined in~~
- 8 ~~subdivision (b) of Section 1 of Article XIII C of the California~~
- 9 ~~Constitution.~~
- 10 (b) ~~“Assessment” means any levy or charge by an agency upon~~
- 11 ~~real property that is based upon the special benefit conferred upon~~
- 12 ~~the real property by a public improvement or service, that is~~
- 13 ~~imposed to pay the capital cost of the public improvement, the~~
- 14 ~~maintenance and operation expenses of the public improvement,~~
- 15 ~~or the cost of the service being provided. “Assessment” includes,~~
- 16 ~~but is not limited to, “special assessment,” “benefit assessment,”~~
- 17 ~~“maintenance assessment,” and “special assessment tax.”~~
- 18 (c) ~~“District” means an area that is determined by an agency to~~
- 19 ~~contain all of the parcels that will receive a special benefit from a~~
- 20 ~~proposed public improvement or service.~~

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

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

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

10 (g) ~~“Identified parcel” means a parcel of real property that an~~
11 ~~agency has identified as having a special benefit conferred upon~~
12 ~~it and upon which a proposed assessment is to be imposed, or a~~
13 ~~parcel of real property upon which a proposed property-related~~
14 ~~fee or charge is proposed to be imposed.~~

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

18 (A) ~~Increases any applicable rate used to calculate the tax,~~
19 ~~assessment, fee, or charge.~~

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

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

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

29 (B) ~~Implements or collects a previously approved tax, fee, or~~
30 ~~charge, so long as the rate is not increased beyond the level~~
31 ~~previously approved by the agency, and the methodology~~
32 ~~previously approved by the agency is not revised so as to result in~~
33 ~~an increase in the amount being levied on any person or parcel.~~

34 (3) ~~A tax, assessment, fee, or charge is not deemed to be~~
35 ~~“increased” in the case in which the actual payments from a person~~
36 ~~or property are higher than would have resulted when the agency~~
37 ~~approved the tax, assessment, fee, or charge, if those higher~~
38 ~~payments are attributable to events other than an increased rate or~~
39 ~~revised methodology, such as a change in the density, intensity,~~
40 ~~or nature of the use of land.~~

1 (i) ~~“Notice by mail” means any notice required by Article XIII C~~
2 ~~or XIII D of the California Constitution that is accomplished~~
3 ~~through a mailing, postage prepaid, deposited in the United States~~
4 ~~Postal Service and is deemed given when so deposited. Notice by~~
5 ~~mail may be included in any other mailing to the record owner~~
6 ~~that otherwise complies with Article XIII C or XIII D of the~~
7 ~~California Constitution and this article, including, but not limited~~
8 ~~to, the mailing of a bill for the collection of an assessment or a~~
9 ~~property-related fee or charge.~~

10 (j) ~~“Record owner” means the owner of a parcel whose name~~
11 ~~and address appears on the last equalized secured property tax~~
12 ~~assessment roll, or in the case of any public entity, the State of~~
13 ~~California, or the United States, means the representative of that~~
14 ~~public entity at the address of that entity known to the agency.~~

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

26 (l) ~~“Registered professional engineer” means an engineer~~
27 ~~registered pursuant to the Professional Engineers Act (Chapter 7~~
28 ~~(commencing with Section 6700) of Division 3 of the Business~~
29 ~~and Professions Code).~~

30 (m) ~~“Vector control” means any system of public improvements~~
31 ~~or services that is intended to provide for the surveillance,~~
32 ~~prevention, abatement, and control of vectors as defined in~~
33 ~~subdivision (k) of Section 2002 of the Health and Safety Code and~~
34 ~~a pest as defined in Section 5006 of the Food and Agricultural~~
35 ~~Code.~~

36 (n) ~~“Water” means any system of public improvements, and the~~
37 ~~public fixtures, appliances, and appurtenances connected to that~~
38 ~~system, intended to provide for the production, storage, supply,~~
39 ~~treatment, or distribution of water from any source.~~

1 ~~SEC. 2.~~

2 *SECTION 1.* Section 53750.5 is added to the Government Code,
3 to read:

4 53750.5. (a) The Legislature finds and declares all of the
5 following:

6 (1) ~~The provision of fire~~ *Fire service is a different and distinct*
7 ~~category of service from the water service made available by a~~
8 ~~water service provider, which aids the fire service provider in~~
9 ~~providing water service, which is one of several other services~~
10 ~~that aids in the provision of fire service.~~

11 (2) ~~Hydrants owned by water service providers are a public~~
12 ~~fixture, appliance, or appurtenance connected to a water system~~
13 ~~for the purpose of providing an immediately available water service~~
14 ~~and are often used by a water service provider for water system~~
15 ~~maintenance.~~

16 (2) *Hydrants are part of the system of public improvements*
17 *described in subdivision (n) of Section 53750.*

18 (3) Hydrants are generally designed, installed, and used to
19 provide an immediately available ~~supply of water~~ *water service*
20 *to aid in extinguishing fires that threaten property served by a*
21 *water service provider, and are generally not designed or installed*
22 *to provide water service to extinguish fires that threaten structures*
23 *and other improvements on property served by the water service*
24 *provider, and are not for the purpose of extinguishing wildfires or*
25 *fires that threaten personal property, vacant lands, or structures*
26 *without water service: property not served by a water service*
27 *provider or wildfires. Hydrants are also used by a water service*
28 *provider for water system operations and maintenance.*

29 (4) *Hydrants are generally located in proximity to properties*
30 *served by a water service provider to facilitate water service to*
31 *those properties.*

32 (4)

33 (5) ~~Hydrants generally~~ *and the water distributed through them*
34 *are not available to the public at large in substantially the same*
35 *manner as they are to property owners: owners served by a water*
36 *service provider because hydrants are designed, installed, and*
37 *used to serve properties receiving water service, and the public*
38 *at large does not generally have access to water through those*
39 *hydrants. Incidental or other de minimis use of hydrants and the*

1 *water distributed through them for other purposes does not change*
2 *their essential character as a property-related service.*

3 ~~(5) The fact that water from a hydrant could be used for a~~
4 ~~purpose other than property protection in an emergency does not~~
5 ~~make either the hydrant or the water dispensed from the hydrant~~
6 ~~available to the public at large in substantially the same manner~~
7 ~~as to property owners.~~

8 ~~(6) The water dispensed through a public hydrant owned by a~~
9 ~~water service provider is a property-related water service provided~~
10 ~~to all property owners, as an incident of property ownership,~~
11 ~~because the water is immediately available to be used to extinguish~~
12 ~~a direct threat to structures and other improvements on property~~
13 ~~and concurrently benefits all parcels, which are threatened with~~
14 ~~damage or destruction by the fire not being extinguished.~~

15 ~~(7) There are water service costs associated with maintaining,~~
16 ~~repairing, and replacing hydrants and costs associated with the~~
17 ~~water dispensed through hydrants to protect real property.~~

18 *(6) Hydrants and the water distributed through them are part*
19 *of the property-related water service provided to all property*
20 *owners served by a water service provider because the water is*
21 *immediately available to be used to aid in extinguishing a direct*
22 *or indirect fire threat to properties and concurrently benefits all*
23 *parcels connected to the water system that are threatened with*
24 *damage or destruction by the fire not being extinguished.*

25 *(7) Property-related water service costs may include, but are*
26 *not limited to, any costs associated with constructing, maintaining,*
27 *repairing, upgrading, and replacing hydrants, and costs associated*
28 *with obtaining, treating, and distributing adequate volumes of*
29 *water to meet the water demands of properties served by the water*
30 *service provider, including water supplied for firefighting purposes.*

31 ~~(b) To the extent consistent~~ *Consistent* with the requirements
32 of Section 6 of Article XIII D of the California Constitution, fees
33 or charges for property-related water service may include the costs
34 to construct, maintain, repair, or replace ~~public hydrants attached~~
35 ~~to a water system, and the cost of water dispensed through public~~
36 ~~hydrants.~~ *hydrants to comply with fire codes and industry*
37 *standards, and may include the cost of water distributed through*
38 *hydrants.* The fee or charge may be fixed and collected consistent
39 with Section 53069.9 of the Government Code, or ~~consistent~~ with

1 any other method consistent with Section 6 of Article XIII D of
2 the California Constitution.

3 (c) *For the purpose of this section, “hydrants” means all*
4 *hydrants and other infrastructure used to distribute water that*
5 *aids in the protection of property from fire, and all related or*
6 *appurtenant infrastructure and facilities owned by a water service*
7 *provider necessary or convenient for distributing water that aids*
8 *in the protection of property from fire, including adequately sized*
9 *and pressurized lines, pumps, and all appurtenances, but does not*
10 *include privately owned hydrants or other private fire response*
11 *related infrastructure.*

12 (d) *This section shall not be construed to prohibit a water*
13 *service provider from charging an individual property owner*
14 *consistent with Section 6 of Article XIII D of the California*
15 *Constitution for the water services related to privately owned*
16 *hydrants, fire meters, fire sprinklers, or other private fire response*
17 *related infrastructure.*

18 ~~(e)~~

19 (e) This section is declaratory of existing law.