
UNFINISHED BUSINESS

Bill No: SB 1386
Author: Moorlach (R), et al.
Amended: 7/28/20
Vote: 21

SENATE GOVERNANCE & FIN. COMMITTEE: 7-0, 5/21/20

AYES: McGuire, Moorlach, Beall, Hertzberg, Hurtado, Nielsen, Wiener

SENATE FLOOR: 39-0, 6/11/20

AYES: Allen, Archuleta, Atkins, Bates, Beall, Borgeas, Bradford, Caballero, Chang, Dahle, Dodd, Durazo, Galgiani, Glazer, Lena Gonzalez, Grove, Hertzberg, Hill, Hueso, Jackson, Jones, Leyva, McGuire, Melendez, Mitchell, Monning, Moorlach, Morrell, Nielsen, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

NO VOTE RECORDED: Hurtado

ASSEMBLY FLOOR: Not available

SUBJECT: Local government: assessments, fees, and charges: water: hydrants

SOURCE: Irvine Ranch Water District
San Diego County Water Authority

DIGEST: This bill finds and declares that fire hydrants are a part of water service for the purposes of Proposition 218 (1996).

Assembly Amendments remove changes to the definition of “water” in the Proposition 218 Omnibus Implementation Act and revise the bill’s findings and declarations.

ANALYSIS:

Existing law:

- 1) Imposes constitutional limits on local officials' ability to impose, increase, and extend fees, including property-related fees (Proposition 218, 1996).
- 2) Defines a property-related fee as any levy other than an *ad valorem* tax, a special tax, or an assessment imposed by an agency on a parcel or on a person as an incident of property ownership, including a user fee for a property-related service.
- 3) Specifies definitions and procedures related to Proposition 218 in the Proposition 218 Omnibus Implementation Act (SB 919, Rainey, 1997). The Act requires local officials to, before imposing a new property related fee or increase an existing one:
 - a) Identify the parcels to be charged.
 - b) Calculate the fee for each parcel.
 - c) Notify the parcels' owners in writing about the fees and the hearing.
 - d) Hold a public hearing to consider and count protests.
 - e) Abandon the fees if a majority of the parcels' owners protest.
- 4) Requires new or increased property-related fees to:
 - a) Be less than the proportional cost of service to each parcel.
 - b) Receive approval by a majority-vote of the affected property owners, two-thirds registered voter approval, or weighted ballot approval by the affected property owners.
- 5) Exempts property-related fees for water, sewer, and refuse collection from the voter approval requirements of Proposition 218.
- 6) Defines water to mean, "any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water from any source."

- 7) Allows a water agency to charge a fee to pay the costs of constructing, operating, and maintaining facilities and equipment related to supplying water for fire protection purposes.
- 8) Allows water agencies can charge this fee to any entity, except for fire agencies unless the two agencies sign a written agreement.

This bill:

1) Finds and declares that:

- a) Fire service is a separate and distinct service from water service, which is one of several other property-related services that aids in the provision of fire service provided to properties.
- b) Hydrants are part of the system of public improvements described in the Proposition 218 Omnibus Implementation Act.
- c) Hydrants are generally designed, installed, and used to provide an immediately available water service to aid in extinguishing fires that threaten property served by a water service provider, not property that isn't served by the water provider.
- d) Hydrants and the water distributed through them have a direct relationship to property ownership because hydrants are generally sized based upon property use and then are installed when parcels are developed or connected to a water system.
- e) Hydrants and the water distributed through them are not available to the public at large in substantially the same manner as they are to property owners served by a water service provider for specified reasons.
- f) Hydrants and the water distributed through them are part of the property-related water service provided to all property owners served by a water service provider, as specified.
- g) Property-related water service costs may include, but are not limited to, any costs associated with constructing, maintaining, repairing, upgrading, and replacing hydrants, and costs associated with obtaining, treating, and distributing adequate volumes of water to meet the water demands of properties served by the water service provider, including water supplied for firefighting purposes. The fees or charges related to those costs are imposed upon a parcel or person as an incident of property ownership.

- h) Fees or charges for property-related water service imposed or increased under Proposition 218 may include the costs to construct, maintain, repair, or replace public hydrants attached to a water system and the cost of water distributed through public hydrants.
- i) The fee or charge may be fixed and collected either as a separate charge or included in other water rates and charges.
- j) “Hydrants” means all hydrants and other infrastructure used to distribute water that aids in the protection of property from fire, and all related infrastructure necessary or convenient for distributing water that aids in the protection of property from fire, as defined.

2) States that it is declaratory of existing law.

Background

Most water agencies, whether cities, counties, or special districts, that serve retail customers use ratepayer funds to pay for fire hydrants, the extra capacity needed for emergency fire flows, and the water used in fighting a fire that is dispensed from a hydrant, as authorized in statute. The Legislature enacted this authority in 1973—prior to the passage of Proposition 218. On February 19, 2020, a class action lawsuit was filed against 81 water agencies throughout the state alleging that their practice of charging ratepayers for the costs associated with supplying water for fire protection violates Proposition 218. Specifically, the complaint argues that this practice results in water agencies charging ratepayers for more than the cost of service to their parcel and imposes costs on property owners for general governmental services that are available to the public at large in substantially the same manner as they are available to property owners.

The Irvine Ranch Water District and the San Diego County Water Authority wants the Legislature to amend the Proposition 218 Omnibus Implementation Act to clarify that water service includes adequate capacity to serve demands during firefighting and the water associated with firefighting.

Comments

- 1) *Purpose of the bill.* According to the author, “SB 1386 is patterned after a recent unpublished case - *Glendale Coalition for Better Gov’t v. City of Glendale* (2018) - where the court effectively reaffirmed the appropriateness of current charges by stating that fire hydrants used to protect properties from fire and costs associated with them are in fact property-related services and therefore allowable under Proposition 218. The bill is an important measure

that can be enacted to protect fire hydrant system funding that would not increase water rates because the costs of fire hydrant system maintenance and operation are already appropriately embedded in customers' water rates, as permitted by existing law.”

- 2) *Fire and water*. At the heart of the lawsuit that has spawned SB 1386 are two questions: (a) are fire hydrants and the water that comes out of them an element of water service or of fire service, and (b) who benefits from the having fire hydrants available for use? The plaintiffs take the position that water and the related infrastructure used in the course of firefighting is a part of providing fire service and is available in the same manner to both property owners and the public. Therefore, charging property owners for those costs impermissibly charges ratepayers for general governmental services. Water agencies see it differently: they argue that the benefit of fire hydrants accrues to the property owners because hydrants are positioned and used to fight structure fires, not wildland or other types of fires that are unrelated to a specific property. One recent court decision agrees with the water agencies (*Glendale Coalition for Better Gov't v. City of Glendale*, 2018 Cal. App. Unpub. LEXIS 8783). The Second District Court of Appeals stated:

...despite the nomenclature, ‘public fire protection’ is not generally available to the public at large in substantially the same manner as it is to the property owners who pay the fee. The general public does not have access to water through fire hydrants. ... Fire hydrants are required to protect subdivisions, buildings, and portions of buildings within City limits. Common sense dictates that fire hydrants are located and available to extinguish fires that threaten property damage. ... Although fire departments could conceivably use any available measure to extinguish a fire unrelated to real property, including hydrant water in the absence of an alternative, hydrants are not located, designed, or intended for all fires that happen to occur in public places, and the water pressure is excessive. ... We conclude: the public fire protection fee provided through hydrants is not a service available to the general public in substantially the same manner as it is to the property owners who pay the fee. Charging the fire protection fee to property owners, therefore, did not violate article XIII D, section 6, of the California Constitution.

SB 1386 borrows heavily from this ruling in an attempt to codify the water agency position, affirming that fire hydrants are a component of water service.

The Legislature may wish to consider whether fire hydrants are a component of water service or more closely connected to the provision of fire service.

- 3) *Easy way out?* There is one clear way of complying with the plaintiff's interpretation of Proposition 218's requirements: water agencies could charge fire agencies for the costs of the facilities that deliver water for firefighting. But this solution isn't as simple as it appears. Proposition 218 grants special status to water service over other types of services: fees for water service don't need voter approval, while nearly all other property-related fees and all taxes do. If fire agencies were required to pay the costs of the infrastructure used to suppress fires, they would have to find the money by securing voter approval for a tax or assessment at the ballot or cut other services. Given the current economic climate, the electorate may not look favorably on new taxes, and local agencies are already considering deep cuts to services to make up for lost revenue. SB 1386 helps maintain service levels by allowing water agencies to continue to spread the cost over their ratepayer base without needing a vote of the people to increase taxes.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 8/24/20)

Irvine Ranch Water District (co-source)
San Diego County Water Authority (co-source)
Alameda County Water District
Anaheim Public Utilities
Association of California Cities, Orange County Chapter
Association of California Water Agencies
Bighorn Desert View Water Agency
California Fire Chiefs Association
California Municipal Utilities Association
California Professional Firefighters
California Special Districts Association
California State Firefighters' Association
California Water Association
California Water Service
City of Carlsbad
City of Clovis
City of Escondido
City of Fountain Valley
City of Fresno

City of Fullerton
City of Hayward
City of Huntington Beach
City of La Habra
City of Long Beach
City of Napa
City of Oceanside
City of Pasadena
City of Poway
City of Sacramento
City of San Diego
City of Santa Clara
City of Santa Cruz
City of Santa Monica
City of Santa Rosa
City of Torrance
City of Torrance
City of Tracy
City of Tustin
City of Vacaville
City of Whittier
Coachella Valley Water District
Community Water Systems Alliance
Contra Costa Water District
County of Ventura
Cucamonga Valley Water District
Desert Water Agency
East Bay Municipal Utility District
East Valley Water District
Eastern Municipal Water District
El Toro Water District
Elsinore Valley Municipal Water District
Fire Districts Association of California
Helix Water District
Inland Empire Utilities Agency
Las Virgenes Municipal Water District
Long Beach Water Department
Monte Vista Water District
Moulton Niguel Water District
Municipal Water District of Orange County

Orange County Water District
Otay Water District
Padre Dam Municipal Water District
Palmdale Water District
Rainbow Municipal Water District
Rancho California Water District
Regional Water Authority
Rowland Water District
Sacramento County Water Agency
San Bernardino Municipal Water Department
San Francisco Public Utilities Commission
San Gabriel Valley Water Association
Santa Ana Public Works Agency
Santa Clarita Valley Water Agency
Santa Margarita Water District
South Orange County Economic Coalition
Trabuco Canyon Water District
Valley Center Municipal Water District
Valley County Water District
Vista Irrigation District
Walnut Valley Water District
Western Municipal Water District

OPPOSITION: (Verified 8/24/20)

None received

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8/30/20 21:16:31

**** **END** ****