



# REPORT TO LAW & LEGISLATION COMMITTEE City of Sacramento

915 I Street, Sacramento, CA 95814-2604

Staff Report  
May 20, 2008

Honorable Members of the  
Law and Legislation Committee

**Title: Legislative Position: SCA 12 Relating to Stormwater (Drainage) Fees and Charges**

**Location/Council District: Citywide**

**Recommendation: Staff recommends that the Law and Legislation Committee support SCA 12.**

**Contact: Jessica Hess, Media and Communication Specialist, (916) 808-8260**

**Presenters: Dave Brent, Engineering Services Manager (916) 808-1420**

**Department: Utilities**

**Division: Administration**

**Organization No: 3311**

## **Description/Analysis**

**Issue:** Currently, under California law (as approved by voters with Proposition 218 in 1998), stormwater (drainage) fees and charges that are collected from residents and businesses in the City must be approved by 2/3 of the voters residing in the area. SCA 12 will remove this 2/3 voter approval requirement and allow drainage fees and charges to be approved by City Council following the same requirements as other utility services (water, sewer and solid waste).

**Policy Considerations:** Currently, under Proposition 218, stormwater (drainage) fees and charges that are collected from residents and businesses in the City must be approved by 2/3 of the voters residing in the area. Water, sewer and solid waste fees and charges are approved by City Council following a public notice and hearing.

Because of this restriction the City of Sacramento has not raised drainage rates since Proposition 218 was passed in 1998. In the ensuing years, more and more regulatory requirements have been placed on the drainage fund and operational costs have increased with inflation. Monies collected by the drainage fund are increasingly being used to meet regulatory requirements, leaving less money

available to operate the drainage system and complete capital improvements to rehabilitate and improve the drainage system. It is estimated that within the next 2 years, the drainage fund will no longer have money available to complete necessary capital upgrades and repairs to the system.

Support of this measure will allow the Department of Utilities to bring forward proposed rate increases to the Rate Advisory Commission and City Council to address the operational, capital and regulatory needs of the drainage fund. It will also allow these bodies to adjust the rates as necessary in the future without the need for an expensive election process.

**Environmental Considerations: None**

**Rationale for Recommendation:** Staff recommends support of SCA 12. This measure will allow City Council and the Utilities Rate Advisory Commission to review and approve or deny any proposed drainage rate or fee changes, as it does with other utilities services.

**Financial Considerations:** Passage of SCA 12 will allow City Council and the Utilities Rate Advisory Commission to review and approve all proposed changes in drainage rates and fees as it does with water, sewer or solid waste services.

Additionally, passage of SCA 12 will help to ensure continued funding of the drainage fund to complete necessary improvements and repairs to the drainage system.

**Emerging Small Business Development (ESBD): None**

Respectfully Submitted by   
Jessica Hess, Media and Communication Specialist

Approved by:   
Gary Reents, Director

Recommendation Approved:

  
Ray Kerridge  
City Manager

*for*

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**Legislative Position: SCA 12 Drainage Fees**

**May 20, 2008**

**Attachment 1**

**May 20, 2008**

**The Honorable Senator Tom Torlakson  
California State Senate  
State Capitol  
Room 5050  
Sacramento, CA 95814  
Attn: Legislative Director**

**Subject: Support of SCA 12- Local Government: Property Related Fees**

**Dear Senator Torlakson,**

**On behalf of the City of Sacramento, I am writing to inform you that we have taken a support position on SCA 12. SCA 12 provides our residents with a way to review and protest potential changes in their stormwater (drainage) rates and fees while providing the City a way to adjust their rates and fees without an expensive election process.**

**Thank you for introducing this legislation.**

**Sincerely,**

**SANDY SHEEDY, Chair  
Law and Legislation Committee**

**cc: Mayor Fargo and Members of the City Council  
David Jones, Emmanuel and Jones and Associates**

AMENDED IN SENATE JUNE 18, 2007

**Senate Constitutional Amendment**

**No. 12**

**Introduced by Senators Torlakson and Yee  
(Coauthor: Senator Kuehl)**

May 21, 2007

Senate Constitutional Amendment No. 12—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  $\frac{2}{3}$  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:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

- 1 *Resolved by the Senate, the Assembly concurring.* That the
- 2 Legislature of the State of California at its 2007-08 Regular
- 3 Session commencing on the fourth day of December 2006.

SCA 12

— 2 —

1 two-thirds of the membership of each house concurring, hereby  
2 proposes to the people of the State of California, that the  
3 Constitution of the State be amended as follows:

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

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

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

20 (2) The agency shall conduct a public hearing upon the proposed  
21 fee or charge not less than 45 days after mailing the notice of the  
22 proposed fee or charge to the record owners of each identified  
23 parcel upon which the fee or charge is proposed for imposition.  
24 At the public hearing, the agency shall consider all protests against  
25 the proposed fee or charge. If written protests against the proposed  
26 fee or charge are presented by a majority of owners of the identified  
27 parcels, the agency shall not impose the fee or charge.

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

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

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

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

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

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

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

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

**Attachment 3**  
BILL ANALYSIS

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|SENATE RULES COMMITTEE           |                               |SCA 12|
|Office of Senate Floor Analyses  |                               |       |
|1020 N Street, Suite 524         |                               |       |
|(916) 651-1520                   |   Fax: (916)                 |       |
|327-4478                         |                               |       |
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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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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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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 3/10/08)

Statewide

Association of California Water Agencies  
California Association of Environmental Health Administrators  
California Coastal Coalition  
California Coastkeeper Alliance  
California Special Districts Association  
California State Association of Counties  
League of California Cities  
Ocean Conservation Society

Regional

Bay Area Stormwater Management Agencies Association  
City/County Association of Governments of San Mateo County  
Friends of the Santa Clara River  
Geosyntec Consultants (Los Angeles)  
Heal the Bay (Southern California)  
Inland Empire Waterkeeper  
Irvine Ranch Water District  
Metropolitan Water District of Southern California

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San Luis Obispo Coastkeeper  
Santa Clara Valley Water District  
Save the Bay (San Francisco Bay Area)  
The River Project (Los Angeles)  
Ventura Countywide Stormwater Quality Management Program

Counties

Contra Costa County  
Lake County  
San Bernardino County  
San Joaquin County  
San Mateo County  
Santa Clara County  
Santa Cruz County  
Ventura County Board of Supervisors

Cities

Antioch  
Brisbane  
Burlingame  
Camarillo  
Chula Vista  
Town of Colma  
Clayton  
Concord  
Coronado  
Covina  
Daly City  
El Cerrito  
Eureka  
Fremont  
Half Moon Bay  
Livermore  
Lafayette  
Lompoc  
Long Beach  
Los Angeles  
Town of Los Gatos  
Martinez  
Manteca  
Menlo Park  
Millbrae  
Monterey  
Monterey Park

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Moorpark  
Moreno Valley  
Oceanside  
Orinda  
Oxnard  
Pacifica  
Palo Alto  
Paramount  
Pasadena  
Pico Rivera  
Pittsburg  
Rancho Mirage  
Redwood City  
Ridgecrest  
Roseville  
Salinas  
San Clemente  
San Leandro  
San Luis Obispo  
San Mateo  
San Pablo  
Santa Clarita  
Santa Monica  
Saratoga  
Scotts Valley  
Signal Hill  
South San Francisco  
Sunnyvale  
Thousand Oaks  
Ventura  
Walnut Creek  
West Covina Public Works Department  
Woodland

OPPOSITION : (Verified 1/3/08)

California Taxpayers' Association  
Howard Jarvis Taxpayers Association

AGB:mw 3/10/08 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

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\*\*\*\* END \*\*\*\*