

California Constitution

ARTICLE XIII D [ASSESSMENT AND PROPERTY-RELATED FEE REFORM] [SECTION 1 - SEC. 6]

(Article 13D added Nov. 5, 1996, by Prop. 218. Initiative measure.)

SECTION 1.

Application. Notwithstanding any other provision of law, the provisions of this article shall apply to all assessments, fees and charges, whether imposed pursuant to state statute or local government charter authority. Nothing in this article or Article XIII C shall be construed to:

- (a) Provide any new authority to any agency to impose a tax, assessment, fee, or charge.
- (b) Affect existing laws relating to the imposition of fees or charges as a condition of property development.
- (c) Affect existing laws relating to the imposition of timber yield taxes.

(Sec. 1 added Nov. 5, 1996, by Prop. 218. Initiative measure.)

SEC. 2.

Definitions. As used in this article:

- (a) "Agency" means any local government as defined in subdivision (b) of Section 1 of Article XIII C.
- (b) "Assessment" means any levy or charge upon real property by an agency for a special benefit conferred upon the real property. "Assessment" includes, but is not limited to, "special assessment," "benefit assessment," "maintenance assessment" and "special assessment tax."
- (c) "Capital cost" means the cost of acquisition, installation, construction, reconstruction, or replacement of a permanent public improvement by an agency.
- (d) "District" means an area determined by an agency to contain all parcels which will receive a special benefit from a proposed public improvement or property-related service.

(e) "Fee" or "charge" means 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.

(f) "Maintenance and operation expenses" means the cost of rent, repair, replacement, rehabilitation, fuel, power, electrical current, care, and supervision necessary to properly operate and maintain a permanent public improvement.

(g) "Property ownership" shall be deemed to include tenancies of real property where tenants are directly liable to pay the assessment, fee, or charge in question.

(h) "Property-related service" means a public service having a direct relationship to property ownership.

(i) "Special benefit" means a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute "special benefit."

(Sec. 2 added Nov. 5, 1996, by Prop. 218. Initiative measure.)

SEC. 3.

Property Taxes, Assessments, Fees and Charges Limited. (a) No tax, assessment, fee, or charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except:

(1) The ad valorem property tax imposed pursuant to Article XIII and Article XIII A.

(2) Any special tax receiving a two-thirds vote pursuant to Section 4 of Article XIII A.

(3) Assessments as provided by this article.

(4) Fees or charges for property related services as provided by this article.

(b) For purposes of this article, fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership.

(Sec. 3 added Nov. 5, 1996, by Prop. 218. Initiative measure.)

SEC. 4.

Procedures and Requirements for All Assessments. (a) An agency which proposes to levy an assessment shall identify all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed. The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation

expenses of a public improvement, or the cost of the property related service being provided. No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and an agency shall separate the general benefits from the special benefits conferred on a parcel. Parcels within a district that are owned or used by any agency, the State of California or the United States shall not be exempt from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit.

(b) All assessments shall be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California.

(c) The amount of the proposed assessment for each identified parcel shall be calculated and the record owner of each parcel shall be given written notice by mail of the proposed assessment, the total amount thereof chargeable to the entire district, the amount chargeable to the owner's particular parcel, the duration of the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, together with the date, time, and location of a public hearing on the proposed assessment. Each notice shall also include, in a conspicuous place thereon, a summary of the procedures applicable to the completion, return, and tabulation of the ballots required pursuant to subdivision (d), including a disclosure statement that the existence of a majority protest, as defined in subdivision (e), will result in the assessment not being imposed.

(d) Each notice mailed to owners of identified parcels within the district pursuant to subdivision (c) shall contain a ballot which includes the agency's address for receipt of the ballot once completed by any owner receiving the notice whereby the owner may indicate his or her name, reasonable identification of the parcel, and his or her support or opposition to the proposed assessment.

(e) The agency shall conduct a public hearing upon the proposed assessment not less than 45 days after mailing the notice of the proposed assessment to record owners of each identified parcel. At the public hearing, the agency shall consider all protests against the proposed assessment and tabulate the ballots. The agency shall not impose an assessment if there is a majority protest. A majority protest exists if, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. In tabulating the ballots, the ballots shall be weighted according to the proportional financial obligation of the affected property.

(f) In any legal action contesting the validity of any assessment, the burden shall be on the agency to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large and that the amount

of any contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question.

(g) Because only special benefits are assessable, electors residing within the district who do not own property within the district shall not be deemed under this Constitution to have been deprived of the right to vote for any assessment. If a court determines that the Constitution of the United States or other federal law requires otherwise, the assessment shall not be imposed unless approved by a two-thirds vote of the electorate in the district in addition to being approved by the property owners as required by subdivision (e).

(Sec. 4 added Nov. 5, 1996, by Prop. 218. Initiative measure.)

SEC. 5.

Effective Date. Pursuant to subdivision (a) of Section 10 of Article II, the provisions of this article shall become effective the day after the election unless otherwise provided. Beginning July 1, 1997, all existing, new, or increased assessments shall comply with this article. Notwithstanding the foregoing, the following assessments existing on the effective date of this article shall be exempt from the procedures and approval process set forth in Section 4:

(a) Any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems or vector control. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.

(b) Any assessment imposed pursuant to a petition signed by the persons owning all of the parcels subject to the assessment at the time the assessment is initially imposed. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.

(c) Any assessment the proceeds of which are exclusively used to repay bonded indebtedness of which the failure to pay would violate the Contract Impairment Clause of the Constitution of the United States.

(d) Any assessment which previously received majority voter approval from the voters voting in an election on the issue of the assessment. Subsequent increases in those assessments shall be subject to the procedures and approval process set forth in Section 4.

(Sec. 5 added Nov. 5, 1996, by Prop. 218. Initiative measure.)

SEC. 6.

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

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

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

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

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

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

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

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

(5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners.

Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership for purposes of this article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.

(c) Voter Approval for New or Increased Fees and Charges. Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures similar to those for increases in assessments in the conduct of elections under this subdivision.

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

(Sec. 6 added Nov. 5, 1996, by Prop. 218. Initiative measure.)