



Agriculture and Natural Resources Policy Committee

Wednesday, January 27, 2010 · 1:00 p.m. – 4:00 p.m.

CSAC First Floor Conference Room

1100 K Street, 1st Floor, Sacramento, CA 95814

AGENDA

Supervisor, John Vasquez, Solano County, Chair
Supervisor Richard Forster, Amador County, Vice- Chair

- 1:00- 1:10 p.m. **I. Welcome and Introductions**
Supervisor John Vasquez, Solano County
Supervisor Richard Forster, Amador County
- 1:10- 2:10 **II. ACTION ITEM: Review & Discussion of Ballot Initiative
New Two-Thirds Requirement for Local
Public Electricity Providers**
Proponent: PG & E Representative
Opponent: Paul Fenn, CEO Local Power
**ATTACHMENT ONE: CSAC MEMO on New Two-Thirds
Requirement for Local Public Electricity Providers**
- 2:10- 2:40 **III. ACTION ITEM: Madera County Proposition 218
Legislative Proposal**
Sharon Glisson, Madera County
Glenna Jarvis, Madera County
**ATTACHMENT TWO: CSAC MEMO on Proposition 218
Proposal**
- 2:40- 3:10 **IV. Williamson Act Discussion:**
 - **Funding Update**
 - **Potential Reform Efforts**
 - **Siting of Solar Energy Systems**
- 3:10- 3:40 **V. 2010 Budget and Legislative Report**
- 3:40- 4:00 **VI. Other Items and Adjournment**

ATTACHMENTS

Attachment One: **ACTION ITEM: Ballot Proposition: PG &E**

Attachment Two:**ACTION ITEM: Proposition 218 Proposal**

Attachment One

Ballot Proposition: New Two-Thirds Requirement for Local Public Electricity Providers



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January 13, 2010

To: CSAC Agriculture & Natural Resources Policy Committee
From: Karen Keene, CSAC Senior Legislative Representative
Cara Martinson, CSAC Legislative Analyst

Re: Ballot Proposition: New Two-Thirds Requirement for Local Public Electricity Providers

Staff Recommendation: Staff recommends an “oppose” position. This measure would seek to limit local government’s ability to expand local energy programs by imposing a new two-thirds voter approval requirement on local governments before they can establish a Community Choice Aggregation (CCA) program, expand a service area of a municipal utility district or use public funds to implement a plan to become a CCA. The proposed ballot measure will go before voters on the June 2010 ballot.

Existing CSAC Policy: CSAC has existing policy to support measures that enhance public power options available to local governments. Specifically, chapter four of the CSAC Platform states that “counties support measures that enhance local government’s ability to become community aggregators of electricity.”

Background: According to the LAO, Californians generally received their electricity service from one of three types of providers: investor-owned utilities (IOUS), publically owned electric utilities, and electric service providers (ESPs), which serve customers who have chosen not to receive their service from the IOU or publically owned utility. Another option, Community Choice Aggregation, allows for electrical service within a CCA defined territory through a contract with an ESP.

Community Choice Aggregation AB 117 (Chapter 838, 2002) established the Community Choice Aggregation option. This program gives cities and counties, or groups of cities and counties, the ability to supply electricity to the customers within their borders. However, a CCA does not necessarily own the transmission and delivery systems. Instead, a CCA is responsible for providing the energy commodity to its constituents—which may or may not entail ownership of electric generating resources. A CCA gives local governments more control over the amount of renewable energy they use and supply to their constituents as well as more local control over retail electricity rates. CCA also gives local governments the ability to issue low-interest revenue bonds to finance community-scale renewable energy projects. Currently, numerous cities and counties are in the process of developing CCAs, including San Diego County, San Francisco, Marin County and the Kings River Conservation District (12 cities in the Fresno area and Kings County), among others. Under current law, CCAs must be approved by local elected officials but not by the public at large. Individuals also have the opportunity to “opt out” of a CCA if they so choose.

Initiative Summary: The proposed initiative would enact a constitutional amendment requiring a two-thirds voter approval by any community prior to spending or borrowing money to set up, implement or expand local energy programs, or to create a Community Choice Aggregation program. According to an LAO analysis of the proposed initiative, if an authorized local government entity seeks to start up electricity service, it must receive approval by two-thirds of the voters in the area proposed to be served. Also, if an existing



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publicly owned utility seeks to expand its electric delivery service into a new territory, it must again receive an approval of two-thirds of the voters in both the area currently served by the utility and the proposed area. Finally, the proposed initiative would require two-thirds voter approval for a local government to create a CCA.

Impact on Local Government: This measure would put further constraints on local governments when seeking to implement public power options and alternatives to investor owned utilities. With regard to the creation of a CCA, the current process allows rate payers to opt out of CCA programs, if they so choose. The current process for establishing a CCA or a municipal utility district (MUD) is carried out in a very transparent and public manner. Additionally, the measure appears to blur the difference between ratepayer and taxpayer. Debt incurred by a CCA or MUD is the responsibility of the ratepayers and not the general fund of the associated local government.

Support/Sponsors of Initiative: PG& E appears to be the sole sponsor of the Initiative.

Opposition:

Local Governments:

City of Berkeley
City of San Francisco
San Francisco Local Agency Formation Commission
Marin Energy Authority (representing 9 cities and the County of Marin)
Town of Fairfax
City of Roseville
City of Redding
City of Lodi
City of Glendale

Organizations:

Sierra Club
The Utility Reform Network
Local Power Inc.
Local Clean Energy Alliance
Bay Localize

Attachment Two
Proposition 218 Proposal



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To: CSAC Agriculture & Natural Resources Policy Committee
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Re: Proposition 218 Amendment – ACTION ITEM

Recommendation. CSAC staff recommends a “support” position on the following proposal.

Existing CSAC Policy. CSAC has existing policy that supports exemptions from Proposition 218 (Prop 218) for storm water. Specifically, CSAC has policy that would support the authorization of cities and counties to adopt fees and charges for storm water urban runoff management programs without having to meet the two-thirds voter approval requirement for property-related fees. Similar exemptions from Prop 218 are currently provided for refuse collection, sewer and water services. CSAC supported past unsuccessful legislative proposals such as SCA 18 (Liu) and SCA 12 (Torlakson) and ACA 13 (Harman) that sought to exempt storm water fees from Prop 218.

Background. Madera County Counsel David Prentice has provided the following background: Provisions of the Constitution of the State of California, particularly Proposition 218, protect citizens' rights to unfair and unjust fee increases and allow citizens to protest fee increases proposed by local government.

Initially water and sewer operations were thought to be exempt from Proposition 218 protest hearings. Two cases, *Richmond v. Shasta Community Services District* (2004) 32 Cal.4th 409 and *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, have determined otherwise. This determination has left public agencies with no recourse when attempting to increase fees or charges to meet operation and maintenance costs. In many cases, this “gap” in the process has left public agencies using General Fund monies to subsidize special districts—creating a reverse violation of Prop 218 by using taxpayer's dollars to pay costs related to special districts when those taxpayers do not directly benefit from the use of these tax dollars.

Proposal: This proposed constitutional amendment is for the purpose of seeking relief from wrongfully using taxpayers' dollars to cover operation and maintenance costs for those living in and benefiting from services within special districts or county service areas. Public agencies seek to close the gap in Prop 218 by creating a means of judicial review through which local governments or property owners may seek a judicial determination that the rate increase sought is necessary to reimburse the public agency for its actual costs of providing the benefit.

Action Requested: Madera County is seeking CSAC's support of this proposed constitutional amendment. The Board of Directors of the Regional Council of Rural Counties (RCRC) adopted a support position on December 16, 2009.

Proposal Language Attached.

Proposed language for Constitutional and statutory Amendment:

A resolution to propose to the People of the State of California: (1) an amendment to the Constitution of the State, amending Section D (Subsection) 6 of Article XIII relating to fee increases and special districts and county service areas, and (2) enacting Government Code section 53757.

SUMMARY:

Provisions of the Constitution of the State of California, particularly Proposition 218, protect citizens' rights to unfair and unjust fee increases and allow citizens to protest fee increases proposed by local government.

Initially water and sewer operations were thought to be exempt from Proposition 218 protest hearings. Two cases, *Richmond v. Shasta Community Services District* (2004) 32 Cal.4th 409 and *Bighorn-Desert View Wat. Agency v. Verjil* (2006) 39 Cal.4th 205, have determined otherwise.

This determination has left public agencies with no recourse when attempting to increase fees or charges to meet operation and maintenance costs. In many cases, this "gap" in the process has left public agencies using General Fund monies to subsidize special districts—creating a reverse violation of Proposition 218 by using taxpayer's dollars to pay costs related to special districts when those taxpayers do not directly benefit from the use of these tax dollars.

This proposed Constitutional Amendment is for the purpose of seeking relief from wrongfully using taxpayers' dollars to cover operation and maintenance costs for those living in and benefiting from services within special districts or county service areas.

Public Agencies seek to close the gap in Proposition 218 by creating a means of judicial review through which local governments or property owners may seek a judicial determination that the rate increase sought is necessary to reimburse the public agency for its actual costs of providing the benefit.

1. *Amend Article XIII Section D (subsection) 6 of the California Constitution to include:*

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

(d) (1) In the event all of the following conditions are met, either (i) a county-governed district or a county service area (CSA) for which a County Board of Supervisors serves as the governing board, or (ii) a majority of the property owners in a county-governed district or CSA for which a County Board of Supervisors serves as the governing board, may seek a judicial review in the Superior Court of new property related fees, charges, or rates, or an increase to existing property related fees, charges or rates to be imposed in said county-governed district or CSA.

A. The county-governed district or CSA proposes to increase existing property related fees, charges or rates for said district for which the Board of Supervisors serves as the governing body;

B. The county-governed district claims that those increases to fees, charges or rates are necessary to meet all costs of providing sewer and water services, including but not limited to maintenance, operations, capital improvements, contractual obligations, and regulatory compliance; and

C. Property owners in the county-governed district or CSA have submitted a successful majority protest that would disallow the imposition of the increased fee, charge, or rate, as provided in Article XIII Section D (subsection) 6.

(2) If, after considering the proposed increase in said property related fee, rate, or charge, and evidence of the county-governed district's or CSA's costs of maintenance, operations, capital improvements, contractual obligations, and regulatory compliance, the court determines by clear and convincing evidence that: (i) an increase to the property related fee, charge, or rate is required to provide the property-related service, (ii) failure to increase the fee, rate or charge would result in a reduction of service, and (iii) a reduction in service would present a threat to the public health, safety, or welfare, the court shall make the final determination as to which of the following will take place:

A. The proposed increase to the property related fee, rate, or charge, will be imposed;

B. A lesser property related fee, rate or charge, than that proposed by the county will be imposed in an amount determined by the Court; or

C. No increase in the property related fee, rate or charge will be imposed.

**[New section adopted November 2, 2010. Initiative measure.]*

(e) Beginning July 1, 1997, all fees or charges shall comply with this section. [New section adopted November 5, 1996. Initiative measure.]

**This will be added to the Constitution provided the voters approve the Constitutional Amendment.*

2. Section 53757 is added to the Government Code to read as follows:

53757. Judicial determination of imposition of property related charges.

(a) (1) A county-governed district or a county service area (CSA) for which a County Board of Supervisors serves as the governing board, or (2) a majority of the property owners in a county-governed district or CSA for which a County Board of Supervisors serves as the governing board, may institute a declaratory relief action in the Superior Court, pursuant to section 962 of Title 14 of Part 2 of the Code of Civil Procedure, to determine whether to impose said new property related fees, charges, or rates or increase existing property related fees, charges or rates in said district or a county service area (CSA).

(b) A declaratory relief action filed pursuant to this section may only be filed if both of the following have occurred: (1) district staff has recommended new property related fees, charges, or rates, or an increase to existing property related fees, charges or rates to be imposed in said county-governed district or CSA, and (2) a successful Proposition 218 majority protest has been presented, which would have the effect of preventing imposition of the new property related fees, charges, or rates, or an increase to existing property related fees, charges or rates to be imposed in said i district or CSA.

(c) In determining the rights and responsibilities concerning the property related fee, charge, or rate, the Court shall consider: (1) the information that was presented to the Governing Board in connection with the recommendation for the imposition of new property related fees, charges, or rates, or an increase to existing property related fees, charges or rates to be imposed in said county-governed district or CSA, and (2) the majority protest that was submitted to the governing board.

(d) If, after considering the proposed increase in said property related fee, rate, or charge, and evidence that was presented to the governing board concerning the county-governed district's or CSA's costs of maintenance, operations, capital improvements, contractual obligations, and regulatory compliance, the court determines by clear and convincing evidence that: (i) an increase to the property related fee, charge, or rate is required to provide the property-related service, (ii) failure to increase the fee, rate or charge would result in a reduction of service, and (iii) a reduction in service would present a threat to the public health, safety, or welfare, the court shall make the final determination as to which of the following will take place:

A. The proposed increase to the property related fee, rate, or charge, will be imposed;

B. A lesser property related fee, rate or charge than that proposed by the county will be imposed in an amount determined by the Court; or

C. No increase in the property related fee, rate or charge increase will be imposed.