



April 23, 2024

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The Honorable Maria Elena Durazo
Chair, Senate Local Government Committee
State Capitol, Room 407
Sacramento, CA 95814

**Re: SB 1072 (Padilla): Local government: Proposition 218: remedies.
As Introduced February 12, 2024 – SUPPORT
Set to be heard in the Senate Local Government Committee – May 1, 2024**

Dear Senator Durazo,

On behalf of the California State Association of Counties, representing all 58 counties in California, I write in support of Senate Bill (SB) 1072 by Senator Padilla. This measure would be declaratory of and clarify the existing law that a refund is not available for alleged "excess" water or wastewater service charges, and that, instead, a challenger's remedy would only be to have any allegedly "excess" charges used to offset future rates and charges.

At its core, the measure would help local agencies avoid upward cost pressures and help agencies avoid imposing costs imposed by class action litigation on future ratepayers. Instead, this measure would allow agencies to reduce future rates and avoid incurring liabilities for which they lack funding sources.

Retail water and wastewater agencies across California are encountering legal hurdles regarding their fee structures for water and wastewater services due to Proposition 218's stringent limitations, particularly concerning the cost of service and proportionality provisions. Frequently, challengers, often characterized as high-water users, argue that the charges levied are not proportional. Consequently, these high-water users often seek refunds through class action lawsuits.

Proposition 218 does not explicitly authorize refunds. Since its amendment to the California Constitution in 1996, courts have addressed violations through remedies such as writs of mandate, declaratory, and injunctive relief. These prospective remedies effectively address the violation by instructing the agency to revise its approach for the future. Any surplus revenues would be allocated towards offsetting future service costs.

In contrast, a refund remedy would function retroactively. Public water agencies rely solely on their rates and charges as revenue sources. Since these agencies set their charges to cover costs without generating profit, any refunds would necessitate future rate increases to fund them, affecting subsequent ratepayers. Such a scenario would lead to an escalating cycle of rising costs. Therefore, providing refunds to address Proposition 218 violations poses a threat to the financial stability of local public agencies. It exposes public water suppliers to liabilities for which they lack a funding source, potentially jeopardizing their solvency.

It is for these reasons that CSAC supports SB 1072 and respectfully requests your AYE vote. Should you have any questions regarding our position, please do not hesitate to contact me at elawyer@counties.org

Sincerely,



Eric Lawyer
Legislative Advocate

cc: The Honorable Steve Padilla, California State Senate
Members and Consultant, Senate Local Government Committee
Ryan Eisenberg, Consultant, Senate Republican Caucus