

Senate Bill No. 919

CHAPTER 38

An act to amend Section 4000 of the Elections Code, to amend Section 54954.6 of, to add Section 5854 to, and to add Article 4.3 (commencing with Section 53739) and Article 4.6 (commencing with Section 53750) to Chapter 4 of Part 1 of Division 2 of Title 5 of, the Government Code, and to amend Section 9525 of the Streets and Highways Code, relating to local government taxes, charges, and assessments, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 1, 1997. Filed with
Secretary of State July 1, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

SB 919, Rainey. Local government taxes, fees, assessments, and charges.

Article XIII C of the California Constitution generally requires a majority vote of the electorate for a local government to impose, extend, or increase any general tax and a $\frac{2}{3}$ vote of the electorate to impose, extend, or increase any special tax and permits the use of the initiative to affect local taxes, assessments, fees, and charges. Article XIII D of the California Constitution generally requires that assessments, fees, and charges be submitted to property owners for approval or rejection after the provision of written notice and the holding of a public hearing.

This bill would enact the Proposition 218 Omnibus Implementation Act to prescribe specific procedures and parameters for local jurisdictions in complying with Article XIII C and Article XIII D of the California Constitution.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. This act shall be entitled the Proposition 218 Omnibus Implementation Act.

SEC. 2. Section 4000 of the Elections Code is amended to read:

4000. Any local, special, or consolidated election may be conducted wholly by mail provided that all of the following conditions apply:

(a) The governing body of the local agency authorizes the use of mailed ballots for the election.



(b) The election does not occur on the same date as a statewide direct primary election or statewide general election.

(c) The election is one of the following:

(1) An election in which no more than 1,000 registered voters are eligible to participate.

(2) A maximum property tax rate election as provided for in Section 2287 of the Revenue and Taxation Code.

(3) An election on a measure or measures restricted to (A) the imposition of special taxes, or (B) expenditure limitation overrides, or (C) both (A) and (B), in a city, county, or special district with 5,000 or less registered voters calculated as of the time of the last report of registration by the county elections official to the Secretary of State.

(4) An election on the issuance of a general obligation water bond in accordance with Section 12944.5 of the Water Code.

(5) An election of the Directors of the Monterey Peninsula Water Management District as authorized in Section 122 of Chapter 527 of the Statutes of 1977, known as the Monterey Peninsula Water Management District Law.

(6) An election of the Aliso Water Management Agency, or its affected member agencies, pursuant to Sections 13416 and 13417 of the Water Code.

(7) An election of the San Jacinto Mountain Area Water Study Agency pursuant to Sections 13416 and 13417 of the Water Code.

(8) An election of the San Lorenzo Valley Water District pursuant to Sections 13416 and 13417 of the Water Code.

(9) Any election or assessment ballot proceeding required or authorized by Article XIII C or XIII D of the California Constitution. However, when an assessment ballot proceeding is conducted by mail pursuant to this section, the following rules shall apply:

(A) The proceeding shall be denominated an “assessment ballot proceeding” rather than an election.

(B) Ballots shall be denominated “assessment ballots.”

SEC. 3. Section 5854 is added to the Government Code, to read:

5854. Section 3 of Article XIII C of the California Constitution, as adopted at the November 5, 1996, general election, shall not be construed to mean that any owner or beneficial owner of a municipal security, purchased before or after that date, assumes the risk of, or in any way consents to, any action by initiative measure that constitutes an impairment of contractual rights protected by Section 10 of Article I of the United States Constitution.

SEC. 4. Article 4.3 (commencing with Section 53739) is added to Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code, to read:



Article 4.3. Local Levies

53739. (a) An ordinance or resolution presented for voter approval pursuant to this article or to Article XIII C or XIII D of the California Constitution may state a range of rates or amounts. If the ordinance or resolution is approved by the requisite number of votes at an election held for that purpose, the governing board of the adopting local government may thereafter impose the tax, assessment, or property-related fee or charge at any rate or amount that is less than or equal to the maximum amount authorized by the voter-approved ordinance or resolution.

(b) (1) Except as provided in paragraph (2), an ordinance or resolution presented for voter approval pursuant to Article XIII C or XIII D of the California Constitution may provide that the tax, assessment, or property-related fee or charge rates or amounts stated in that ordinance or resolution may be adjusted for inflation pursuant to a clearly identified formula stated in that ordinance or resolution. If an ordinance or resolution described in the preceding sentence is approved by the requisite number of votes at an election held for that purpose, the governing board of the adopting local government may thereafter impose the tax, assessment, or property-related fee or charge at any rate or amount that is less than or equal to the inflation-adjusted maximum amount authorized by the voter-approved ordinance or resolution.

(2) Notwithstanding the authority established in paragraph (1), if the amount or rate of a tax, assessment, or property-related fee or charge is determined by using a percentage calculation, the ordinance imposing the tax, assessment, or property-related fee or charge may not provide that the percentage will be adjusted for inflation.

SEC. 5. Article 4.6 (commencing with Section 53750) is added to Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code, to read:

Article 4.6. Proposition 218 Omnibus Implementation Act

53750. For purposes of Article XIII C and Article XIII D of the California Constitution and this article:

(a) "Agency" means any local government as defined in subdivision (b) of Section 1 of Article XIII C of the California Constitution.

(b) "Assessment" means any levy or charge by an agency upon real property that is based upon the special benefit conferred upon the real property by a public improvement or service, that is imposed to pay the capital cost of the public improvement, the maintenance and operation expenses of the public improvement, or the cost of the service being provided. "Assessment" includes, but is not limited to,



“Special Assessment,” “Benefit Assessment,” “Maintenance Assessment,” and “Special Assessment Tax.”

(c) “District” means an area that is determined by an agency to contain all of the parcels that will receive a special benefit from a proposed public improvement or service.

(d) “Drainage system” means any system of public improvements that is intended to provide for erosion control, landslide abatement, or for other types of water drainage.

(e) “Extended,” when applied to an existing tax or fee or charge, means a decision by an agency to extend the stated effective period for the tax or fee or charge, including, but not limited to, amendment or removal of a sunset provision or expiration date.

(f) “Flood control” means any system of public improvements that is intended to protect property from overflow by water.

(g) “Identified parcel” means a parcel of real property that an agency has identified as having a special benefit conferred upon it and upon which a proposed assessment is to be imposed, or a parcel of real property upon which a proposed property-related fee or charge is proposed to be imposed.

(h) (1) “Increased,” when applied to a tax, assessment, or property-related fee or charge, means a decision by an agency that does either of the following:

(A) Increases any applicable rate used to calculate the tax, assessment, fee or charge.

(B) Revises the methodology by which the tax, assessment, fee or charge is calculated, if that revision results in an increased amount being levied on any person or parcel.

(2) A tax, fee, or charge is not deemed to be “increased” by an agency action that does either or both of the following:

(A) Adjusts the amount of a tax or fee or charge in accordance with a schedule of adjustments, including a clearly defined formula for inflation adjustment that was adopted by the agency prior to November 6, 1996.

(B) Implements or collects a previously approved tax, or fee or charge, so long as the rate is not increased beyond the level previously approved by the agency, and the methodology previously approved by the agency is not revised so as to result in an increase in the amount being levied on any person or parcel.

(3) A tax, assessment, fee or charge is not deemed to be “increased” in the case in which the actual payments from a person or property are higher than would have resulted when the agency approved the tax, assessment, or fee or charge, if those higher payments are attributable to events other than an increased rate or revised methodology, such as a change in the density, intensity, or nature of the use of land.

(i) “Notice by mail” means any notice required by Article XIII C or XIII D of the California Constitution that is accomplished through



a mailing, postage prepaid, deposited in the United States Postal Service and is deemed given when so deposited. Notice by mail may be included in any other mailing to the record owner that otherwise complies with Article XIII C or XIII D of the California Constitution and this article, including, but not limited to, the mailing of a bill for the collection of an assessment or a property-related fee or charge.

(j) “Record owner” means the owner of a parcel whose name and address appears on the last equalized secured property tax assessment roll, or in the case of any public entity, the State of California, or the United States, means the representative of that public entity at the address of that entity known to the agency.

(k) “Registered professional engineer” means an engineer registered pursuant to the Professional Engineers Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code).

(l) “Vector control” means any system of public improvements or services that is intended to provide for the surveillance and control of vectors as defined in subdivision (f) of Section 2200 of the Health and Safety Code.

(m) “Water” means any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water.

53753. (a) The notice, protest, and hearing requirements imposed by this section supersede any statutory provisions applicable to the levy of a new or increased assessment that is in existence on the effective date of this section, whether or not that provision is in conflict with this article. Any agency that complies with the notice, protest, and hearing requirements of this section shall not be required to comply with any other statutory notice, protest, and hearing requirements that would otherwise be applicable to the levy of a new or increased assessment, with the exception of Division 4.5 (commencing with Section 3100) of the Streets and Highways Code. If the requirements of that division apply to the levy of a new or increased assessment, the levying agency shall comply with the notice, protest, and hearing requirements imposed by this section as well as with the requirements of that division.

(b) Prior to levying a new or increased assessment, or an existing assessment that is subject to the procedures and approval process set forth in Section 4 of Article XIII D of the California Constitution, an agency shall give notice by mail to the record owner of each identified parcel. Each notice shall include the total amount of the proposed assessment chargeable to the entire district, the amount chargeable to the record owner’s parcel, the duration of the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, and 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 for the completion, return, and tabulation of the assessment ballots required pursuant to subdivision (c), including a statement that the assessment shall not be imposed if the ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment, with ballots weighted according to the proportional financial obligation of the affected property. An agency shall give notice by mail at least 45 days prior to the date of the public hearing upon the proposed assessment.

(c) Each notice given pursuant to subdivision (b) shall contain an assessment ballot that includes the agency's address for receipt of the form and a place where the person returning the assessment ballot may indicate his or her name, a reasonable identification of the parcel, and his or her support or opposition to the proposed assessment. Each assessment ballot shall be signed and either mailed or otherwise delivered to the address indicated on the assessment ballot. Regardless of the method of delivery, all assessment ballots shall be received at the address indicated, or the site of the public testimony, in order to be included in the tabulation of a majority protest pursuant to subdivision (e). An assessment ballot may be submitted, changed, or withdrawn prior to the conclusion of the public testimony on the proposed assessment at the hearing. An agency may provide an envelope for the return of the assessment ballot.

(d) At the time, date, and place stated in the notice mailed pursuant to subdivision (b), the agency shall conduct a public hearing upon the proposed assessment. At the public hearing, the agency shall consider all objections or protests, if any, to the proposed assessment. At the public hearing, any interested person shall be permitted to present written or oral testimony. The public hearing may be continued from time to time.

(e) (1) At the conclusion of the public hearing conducted pursuant to subdivision (d), the agency shall tabulate the assessment ballots submitted, and not withdrawn, in support of or opposition to the proposed assessment. The agency may use technological methods of tabulating the assessment ballots, including, but not limited to, punchcard or optically readable (bar-coded) assessment ballots.

In the event that more than one of the record owners of an identified parcel submits an assessment ballot, the amount of the proposed assessment to be imposed upon the identified parcel shall be allocated to each ballot submitted in proportion to the respective record ownership interests or, if the ownership interests are not shown on the record, as established to the satisfaction of the agency by documentation provided by those record owners.

(2) A majority protest exists if the assessment ballots submitted, and not withdrawn, in opposition to the proposed assessment exceed the assessment ballots submitted, and not withdrawn, in its favor, weighting those assessment ballots by the amount of the proposed



assessment to be imposed upon the identified parcel for which each assessment ballot was submitted.

(3) If there is a majority protest against the imposition of a new assessment, or the extension of an existing assessment, or an increase in an existing assessment, the agency shall not impose, extend, or increase the assessment.

(4) The majority protest proceedings described in this subdivision shall not constitute an election or voting for purposes of Article II of the California Constitution or of the California Elections Code.

53753.5. (a) If an agency has complied with the notice, protest, and hearing requirements of Section 53753, or if an agency is not required to comply with those requirements because the assessment is exempt from the procedures and approval process set forth in Section 4 of Article XIII D of the California Constitution, then those requirements shall not apply in subsequent fiscal years unless the assessment methodology is changed to increase the assessment, or the amount of that assessment is proposed to exceed an assessment formula or range of assessments adopted by an agency in accordance with Article XIII D of the California Constitution or Section 53753.

(b) Notwithstanding subdivision (a), the following assessments existing on the effective date of Article XIII D of the California Constitution shall be exempt from the procedures and approval process set forth in Section 4 of that article:

(1) 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.

(2) 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.

(3) 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.

(4) Any assessment that previously received majority voter approval from the voters voting in an election on the issue of the assessment.

Any subsequent increases in an assessment listed in paragraph (1), (2), or (4) shall be subject to the procedures and approval process set forth in Section 4 of Article XIII D of the California Constitution.

(c) For purposes of this section, the following words and phrases shall have the following meanings:

(1) "Assessments existing on the effective date of Article XIII D of the California Constitution" means assessments levied by the legislative body of the agency on or before November 6, 1996.

(2) "Procedures and approval process set forth in Section 4 of Article XIII D" means all of the requirements set forth in Section 4 of Article XIII D of the California Constitution, including, but not



limited to, the requirement to separate general and special benefits and the requirement to assess parcels that are owned or used by an agency, the State of California, or the United States of America.

SEC. 6. Section 54954.6 of the Government Code is amended to read:

54954.6. (a) (1) Before adopting any new or increased general tax or any new or increased assessment, the legislative body of a local agency shall conduct at least one public meeting at which local officials shall allow public testimony regarding the proposed new or increased general tax or new or increased assessment in addition to the noticed public hearing at which the legislative body proposes to enact or increase the general tax or assessment.

For purposes of this section, the term “new or increased assessment” does not include any of the following:

(A) A fee that does not exceed the reasonable cost of providing the services, facilities, or regulatory activity for which the fee is charged.

(B) A service charge, rate, or charge, unless a special district’s principal act requires the service charge, rate, or charge to conform to the requirements of this section.

(C) An ongoing annual assessment if it is imposed at the same or lower amount as any previous year.

(D) An assessment that does not exceed an assessment formula or range of assessments previously specified in the notice given to the public pursuant to subparagraph (G) of paragraph (2) of subdivision (c) and that was previously adopted by the agency or approved by the voters in the area where the assessment is imposed.

(E) Standby or immediate availability charges.

(2) The legislative body shall provide at least 45 days’ public notice of the public hearing at which the legislative body proposes to enact or increase the general tax or assessment. The legislative body shall provide notice for the public meeting at the same time and in the same document as the notice for the public hearing, but the meeting shall occur prior to the hearing.

(b) (1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased general tax shall be accomplished by placing a display advertisement of at least one-eighth page in a newspaper of general circulation for three weeks pursuant to Section 6063 and by a first-class mailing to those interested parties who have filed a written request with the local agency for mailed notice of public meetings or hearings on new or increased general taxes. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the first publication of the joint notice pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. Notwithstanding paragraph (2) of subdivision (a), the joint notice need not include notice of the public meeting after the meeting has



taken place. The public hearing pursuant to subdivision (a) shall take place no earlier than 45 days after the first publication of the joint notice pursuant to this subdivision. Any written request for mailed notices shall be effective for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

(2) The notice required by paragraph (1) of this subdivision shall include, but not be limited to, the following:

(A) The amount or rate of the tax. If the tax is proposed to be increased from any previous year, the joint notice shall separately state both the existing tax rate and the proposed tax rate increase.

(B) The activity to be taxed.

(C) The estimated amount of revenue to be raised by the tax annually.

(D) The method and frequency for collecting the tax.

(E) The dates, times, and locations of the public meeting and hearing described in subdivision (a).

(F) The phone number and address of an individual, office, or organization that interested persons may contact to receive additional information about the tax.

(c) (1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased assessment on real property shall be accomplished through a mailing, postage prepaid, in the United States mail and shall be deemed given when so deposited. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the joint mailing pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. The envelope or the cover of the mailing shall include the name of the local agency and the return address of the sender. This mailed notice shall be in at least 10-point type and shall be given to all property owners proposed to be subject to the new or increased assessment by a mailing by name to those persons whose names and addresses appear on the last equalized county assessment roll or the State Board of Equalization assessment roll, as the case may be.

(2) The joint notice required by paragraph (1) of this subdivision shall include, but not be limited to, the following:

(A) The estimated amount of the assessment per parcel. If the assessment is proposed to be increased from any previous year, the joint notice shall separately state both the amount of the existing assessment and the proposed assessment increase.

(B) A general description of the purpose or improvements that the assessment will fund.



(C) The address to which property owners may mail a protest against the assessment.

(D) The phone number and address of an individual, office, or organization that interested persons may contact to receive additional information about the assessment.

(E) A statement that a majority protest will cause the assessment to be abandoned if the assessment act used to levy the assessment so provides. Notice shall also state the percentage of protests required to trigger an election, if applicable.

(F) The dates, times, and locations of the public meeting and hearing described in subdivision (a).

(G) A proposed assessment formula or range as described in subparagraph (D) of paragraph (1) of subdivision (a) if applicable and that is noticed pursuant to this section.

(3) Notwithstanding paragraph (1), in the case of an assessment that is proposed exclusively for operation and maintenance expenses imposed throughout the entire local agency, or exclusively for operation and maintenance assessments proposed to be levied on 50,000 parcels or more, notice may be provided pursuant to this subdivision or pursuant to paragraph (1) of subdivision (b) and shall include the estimated amount of the assessment of various types, amounts, or uses of property and the information required by subparagraphs (B) to (G), inclusive, of paragraph (2) of subdivision (c).

(4) Notwithstanding paragraph (1), in the case of an assessment proposed to be levied pursuant to Part 2 (commencing with Section 22500) of Division 2 of the Streets and Highways Code by a regional park district, regional park and open-space district, or regional open-space district formed pursuant to Article 3 (commencing with Section 5500) of Chapter 3 of Division 5 of, or pursuant to Division 26 (commencing with Section 35100) of, the Public Resources Code, notice may be provided pursuant to paragraph (1) of subdivision (b).

(d) The notice requirements imposed by this section shall be construed as additional to, and not to supersede, existing provisions of law, and shall be applied concurrently with the existing provisions so as to not delay or prolong the governmental decisionmaking process.

(e) This section shall not apply to any new or increased general tax or any new or increased assessment that requires an election of either of the following:

(1) The property owners subject to the assessment.

(2) The voters within the local agency imposing the tax or assessment.

(f) Nothing in this section shall prohibit a local agency from holding a consolidated meeting or hearing at which the legislative body discusses multiple tax or assessment proposals.



(g) The local agency may recover the reasonable costs of public meetings, public hearings, and notice required by this section from the proceeds of the tax or assessment. The costs recovered for these purposes, whether recovered pursuant to this subdivision or any other provision of law, shall not exceed the reasonable costs of the public meetings, public hearings, and notice.

(h) Any new or increased assessment that is subject to the notice and hearing provisions of Article XIII C or XIII D of the California Constitution is not subject to the notice and hearing requirements of this section.

SEC. 7. Section 9525 of the Streets and Highways Code is amended to read:

9525. (a) If the legislative body finds that all of the following conditions are satisfied, it may approve and confirm the report prepared pursuant to Section 9523 and proceed to authorize, issue, and sell refunding bonds pursuant to Chapter 3 (commencing with Section 9600):

(1) That each estimated annual installment of principal and interest on the reassessment, as set forth pursuant to subdivision (d) of Section 9523, is less than the corresponding annual installment of principal and interest on the portion of the original assessment being superseded and supplanted, as set forth in subdivision (c) of Section 9523, by the same percentage for all subdivisions of land within the district. Any amount added to the annual installments on the reassessment due to a delinquency in payment on the original assessment need not be considered in this calculation.

(2) That the number of years to maturity of all refunding bonds is not more than the number of years to the last maturity of the bonds being refunded.

(3) That the principal amount of the reassessment on each subdivision of land within the district is less than the unpaid principal amount of the portion of the original assessment being superseded and supplanted by the same percentage for each subdivision of land within the district. Any amount added to a reassessment because of a delinquency in payment on the original assessment need not be considered in this calculation.

(b) Any reassessment that is approved and confirmed pursuant to this section shall not be deemed to be an assessment within the meaning of, and may be ordered without compliance with the procedural requirements of, Article XIII D of the California Constitution.

SEC. 8. The provisions of this act are severable. In the event that any provision of this act is held to be invalid or unconstitutional by any court of competent jurisdiction, that holding shall not invalidate or render unenforceable any other provision of this act.



SEC. 9. The provisions of this act shall be liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The voters of California recently adopted Proposition 218, "The Right to Vote on Taxes Act," which comprises Articles XIII C and XIII D of the California Constitution. That proposition took effect on November 6, 1996, and certain of its provisions are effective on July 1, 1997. The proposition is inconsistent with numerous preexisting statutes affecting local government finance. It is necessary that this legislation take immediate effect to clarify the law so that local governments can adopt budgets for the 1997-98 fiscal year to provide essential local services in compliance with Proposition 218 without needless confusion, duplication of effort, and uncertainty.

