

**PROPOSITION 218:  
A SUMMARY OF ITS PROVISIONS AND IMPACTS**

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On December 18th, the Legislative Analysts Office (LAO) released a 52 page report entitled "Understanding Proposition 218".<sup>1</sup> The purpose of the LAO report is to help legislators, local officials, and others better understand Proposition 218 and its ramifications. The report explains the most significant provisions of Proposition 218. Where there is a difference of opinion between interested parties over the implementation or interpretation of a particular provision of Proposition 218 the LAO explains the various positions and what the likely avenues for resolution may be.

The goal of this paper is to condense the LAO's report into a useful summary, not to add a further layer of interpretation to the debate about implementing Proposition 218. The LAO's full report is available by calling (916) 445-2375. The report is also available on the LAO's website at <http://www.lao.ca.gov>. For additional information on Proposition 218, see California Budget Project's (CBP) *Budget Briefs* entitled "What Would Proposition 218 Mean For California?" and "What Are The Differences Between Taxes, Fees, and Assessments?" These *Budget Briefs* are available by calling (916)444-0500 or on CBP's website at <http://www.cbp.org>.

**ASSESSMENTS, NEW TAXES MOST AT RISK**

- Local government could suffer as much as a five percent annual decrease in the \$50 billion that it collects annually from taxes, assessments, and fees. This could mean a potential loss of \$2.5 billion annually.
- Jurisdictions that are highly dependent on fees and/or assessments, such as some special districts, may lose more than the estimated 5 percent.
- Proposition 218 requires the immediate reduction or elimination of certain existing fees and assessments. The assessments most likely to be eliminated are for fire protection, ambulance service, lighting and landscaping, and parks and recreation. These actions may cause a reduction of at least \$100 million in 1997-98.
- Proposition 218 also requires governments to place certain existing assessments and taxes before the voters. Depending on the outcome of these elections, local governments may lose additional revenue, potentially exceeding \$100 million.
- Many local governments, especially counties, have limited ability to reduce costs because many of the services they provide are mandated by state law. Consequently, even small revenue losses associated with Proposition 218 could trigger large reductions in discretionary programs.
- Many local governments will also have to pay assessments imposed by other governmental entities, further reducing their revenue base.

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<sup>1</sup> Marianne O'Malley, *Understanding Proposition 218*, Legislative Analysts Office (December 1996).

## LIMITED ABILITY OF LOCAL GOVERNMENT TO RAISE REVENUE

- Local government will probably seek assistance from the state and federal governments in order to mitigate the impact of Proposition 218. These attempts will likely produce few results given the fiscal and political landscapes in Sacramento and in Washington, DC.
- Limitations on property based taxes, assessments, and fees will likely cause local governments to turn to “non-property” sources of revenue. Local governments ability to rely on this type of revenue will depend on how broadly the legislature or the courts define the term “non-property”.

## ROLE OF STATE GOVERNMENT

- The legislature will be asked to clarify and define provisions and terms in Proposition 218.
- Local government will likely ask for assistance in the form of mandate relief, increased revenue and/or expanded revenue raising authority beginning in the spring of 1997, as the consequences of Proposition 218 become apparent.
- Proposition 218 complicates efforts to realign program responsibilities between the state and local government. The state legislature will have less flexibility to increase local government’s responsibilities without providing state revenue now that local government cannot adjust or create their own revenue.

## “PROPERTY-RELATED FEE”

- Proposition 218 restricts property-related fees, which are fees imposed “as an incident of property ownership.” This is a new term and there is no consensus on what constitutes a “property-related fee.” This issue is important and will probably be decided by the legislature or the courts.
- The drafters of Proposition 218 say the term refers to most fees commonly collected on monthly bills to property owners, such as water delivery, garbage service, sewer service, and storm water management.

## HOW ARE CURRENT AND FUTURE TAXES AFFECTED?

### *Requirements for Taxes*

- Proposition 218 does not affect existing special taxes or most general taxes.
- Proposition 218 does affect general taxes imposed in 1995 or 1996 without a vote of the people. However, general taxes imposed in the early 1990s by general law cities and counties continue to be vulnerable to a challenge that the tax was not placed on the ballot as required by Proposition 62, which was found constitutional by the California Supreme Court in 1995.
- In order to continue a tax that was imposed in 1995 or 1996, local government must place the tax before the voters by November 6, 1998. The tax may be continued if it receives a majority vote of the electorate.
- These elections on taxes must occur at the same time as the regularly scheduled election for members of the governing body of the jurisdiction. An election on these taxes may be held sooner if the governing body declares the election an emergency by unanimous vote.
- In order to impose or increase any future taxes, local governments, including charter cities, must have all general taxes approved by a majority vote of the people. Elections for general taxes must be consolidated with a regularly scheduled election for members of the local governing body and

require a majority vote. Any “special tax” requires a vote of two-thirds of all voters in the community or affected area.

### ***Requirements for Assessments***

- Local governments must bring existing assessments and property-related fees into conformity with Proposition 218 by July 1, 1997.
- All existing assessments and standby charges (defined as assessments by Proposition 218) must be reviewed to determine whether they meet one of the following conditions: (1) The assessment was previously approved by the voters or by all the property owners at the time the assessment was created. (2) All the assessment proceeds are pledged to bond repayment.<sup>2</sup> (3) All the assessment proceeds are used to pay for sidewalks, streets, sewer, water, flood control, drainage systems, or vector control.
- More than one-half of all existing assessments are likely to be exempt from the election process because they meet one of the above conditions.
- If an assessment is determined not to be exempt, then the local government must eliminate the assessment or bring it into compliance with Proposition 218’s election and assessment calculation requirements.

## **ASSESSMENT CALCULATION REQUIREMENTS**

- Assessment calculation requirements comprise one of Proposition 218’s most significant changes. Local governments must now use a three stage process to determine whether property owners receive “special benefit” from the project or service to be financed by the assessment.
  1. The local government must determine if a project or service provides special benefits. Prop 218 defines a special benefit as a particular benefit to land and buildings, not a general benefit to the public or a general increase in property values. If a project or service does not meet this definition then it may not be financed through an assessment.
  2. Local government must secure a professional engineer’s report estimating the amount of special benefit landowners would receive from a project or service, as well as the amount of “general benefit” derived from an assessment. The amount of general benefit must then be subtracted from the special benefit since Proposition 218 only allows local governments to charge assessments on the special benefits derived from a project or service.
  3. Local governments must set individual assessment charges so that property owners only pay their proportional share of the total cost of an assessment. This may require local governments to set assessment rates on a parcel-by-parcel basis.

### ***Assessment Election Requirements***

- Local governments must now mail information regarding new assessments to all property owners, including a mail-in ballot for the property owner to vote their approval or disapproval of the assessment.
- After mailing a notice, the local government must hold a public hearing. At the end of the hearing the local government must count the ballots, weighting them in proportion to the amount of the assessment each property owner would pay.

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<sup>2</sup> It is unclear what the approval requirements of Proposition 218 are in a situation where only a portion of the assessment is pledged to bond repayment. Proponents of Proposition 218 maintain that all assessments not completely dedicated to bond repayment must be placed before the voters. Others interpret Section 3 of Proposition 218 to mean that only the portion of an assessment that is not pledged to bond repayment is exempt from the voter approval requirements of Proposition 218.

- All new or increased assessments must follow the assessment calculation and election requirements discussed above. There are no exceptions to this requirement.

#### ***Requirements for Fees***

- Local governments must first determine whether existing fees are property-related and imposed as an “incident of property ownership.” If a fee is not property-related then no further action is required and the fee may continue.
- If the fee is property-related, then the local government must make sure it complies with Proposition 218’s restrictions on the use of fee revenues and the rate calculation requirements by July 1, 1997.

#### ***Rate Calculation Requirement for Fees***

- Local governments must make sure that no property owner’s fee is greater than the proportionate cost of providing the property-related service to a particular parcel. This will make it difficult for local government to continue programs that offer reduced service rates to low income residents since governments finance many of these programs by charging higher rates to other property owners.
- For new fees, local governments must comply with the fee restrictions and rate calculation requirements as discussed above. In addition, they must mail information regarding the proposed fee to every property owner.
- Local governments must hold a hearing at least 45 days after the mailing. If a majority of affected property owners present written protests to the proposed fee it is rejected. If a majority does not protest, then the local government must hold an election to be decided by a majority of property owners or two-thirds of the electorate.

#### ***Restrictions On The Use of Fees***

- Local governments may be able to restructure property-related fees so that they are no longer considered a fee imposed “as an incident of property ownership” or privatize certain functions financed by property-related fees since Proposition 218 imposes no limit on private fees.
- Property related fees may not be:
  1. Used to pay for general governmental services such as police and fire.
  2. Imposed for services not used by, or immediately available to, the property owner.
  3. Used to finance programs unrelated to the property-related service.

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