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PROPOSITION 218: How it Works and What it Means

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Context

Approved by California voters in November, 1996, Proposition 218 represents a new approach to limiting local government revenue powers. While prior actions originating with Proposition 13 of 1978 concentrated on taxes, mainly the property tax, Proposition 218 changes the focus to two other revenue sources—assessments and fees. Sponsors of 218 argued that local governments' increasing use of assessments and fees after the 1970s merely substituted other revenue for lost property taxes, constituting an "end run" around Proposition 13.

The changes in local government finances introduced by Proposition 218 are much more subtle and confusing than the blunt property tax restrictions of Proposition 13. They involve definitions of revenue purposes and benefits, and detailed procedures of local government. Uncertainties in meaning and application abound, inviting legislative action and court interpretation.

What follows is a simplified explanation of the key provisions of Proposition 218, based largely on the reports listed in the references. (The accuracy of this information has been reviewed by several state government staff members with expertise in local government finance.)

Taxes, Assessments, Fees

Implicit in Proposition 218 are certain basic differences among these local revenue sources, involving essentially the link between revenue payers and specific benefits.

Taxes (property, sales, business, hotel, utility) are involuntary charges in which there is no direct link between the taxpayers and the degree of benefit provided; the benefits are generally community-wide. Proposition 13 established the distinction between *General* and *Special*

taxes based on whether or not the revenue is earmarked for a specific purpose. *Special (earmarked) taxes* require two-thirds voter approval. *General (non-earmarked) taxes* now require simple majority voter approval.

Assessments (for streets sidewalks, street lights, etc.) are involuntary charges levied on particular parcels of property for specific improvements. There is a link between the property and the degree of benefit provided. Parcels subject to a particular assessment are usually located within a benefit assessment district, a geographical unit created just as a funding tool.

Fees (or "service charges" for water use, recreational programs, building permits, development approval, etc.) are voluntary charges for a service or facility provided to all consumers of such services.

Cities and enterprise special districts generally use assessments and fees more than counties, school districts, and property tax-dependent special districts. Assessments currently account for less than 4 percent of total city revenues statewide and only .02 percent of total county revenues. Total city revenues statewide from fees is about 41 percent, and 9 percent for counties. For cities, since the late 1970s, total revenues from assessments and fees have more than quadrupled.

Because of these differences, Proposition 218 affects cities and special districts that depend on fees more than counties and special districts dependent on taxes.

218's Major Provisions

Assessments and fees are treated in similar fashion by Proposition 218, although there are difference in the details of requirements and process. For both types of revenue, the constitutional amendment imposes three new sets of

criteria: (1) the definition of what services can be funded by assessments and fees on property; (2) the calculation of costs per parcel; and (3) notification and approval requirements:

Benefits. The purposes of particular assessments and fees are sharply distinguished as to whether or not they provide specific benefits to property. The general rule is that assessments and property-related fees cannot be used to fund programs that do not provide benefits to specific parcels. Eligible programs in the case of assessments include improvements to sidewalks, streets, drainage systems; in the case of fees, they include water delivery, garbage, sewer. Services that are not property related seem to include police, fire, ambulance, libraries.

Calculations. For each parcel receiving a benefit from an assessment or service, a local government must calculate the proportionate share of the total cost to all parcels. The calculations for assessments must be prepared by *professional engineers*.

Approval. New notification and election procedures are required for the approval of new assessments and property-related fees or increases in existing assessments and fees. For assessments, this includes a mail ballot to all affected property owners and required approval of property owners representing at least 50 percent of the *total assessment value*. In the case of fees, if the proposed fee or increase is not rejected by a majority of property owners in written protests, it needs *approval in an election by either (a) a majority of property owners, or (b) two-thirds of all voters*. Property-related fees for water, sewer and refuse collection do not require voter approval.

Other provisions of Proposition 218 include:

Conformity. Local governments must bring existing assessments and property-related fees into conformity by July 1, 1997.

General Taxes. Majority voter requirement for the approval of general taxes is affirmed. Local governments must obtain, by November, 1998, approval for general taxes imposed in 1995 and 1996 that were not voter reviewed at that time.

Initiative. All taxes, assessments, and fees are subject to the local initiative process, with the possible exception of revenue streams used to repay bonds.

Charter Cities. Required majority voter approval for general taxes is extended to charter cities.

Further Clarification and Interpretation

The language of Proposition 218 most certainly will undergo court review and interpretations and legislative clarification. Among its uncertainties are the definitions of "special" versus "general" benefits for assessments, the meaning of "property-related" as applied to fees and the voting eligibility of renters.

Long-Term Consequences

Proposition 218 adds to the fundamental changes in the funding and control of California local government that were initiated by Proposition 13. In the long-term, there are these changes in priorities, power, procedures, and costs:

- Further fragmentation of the funding system for local government programs, distinguishing between classes of taxpayers and benefits, and moving away from the communitywide (or "common pool") concept of government services and finances.
- Harder to fund programs that benefit "people" or communities generally.
- Costly procedural requirements for local government.
- Increase in the power of property owners, especially owners of large and high value properties.
- Added local government borrowing costs, as interest rates on bonds increase because of lender perceptions of higher risk.
- Further shift from representative to direct democracy, from elected decision makers to voter majorities and extra-majorities.
- More state control over local government and community affairs, especially as the legislature, governor and the courts are called upon to clarify local fiscal rules.

References

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