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SB 231: Stormwater fees and property taxes

By Jeremy Jungreis

Gov. Brown signed Senate Bill 231 into law in October. The governor's signature opened up another legal chapter in California's tortured history of tax and fee assessment, and placed into question who may be required to pay stormwater fees, and the recourse of local governments when faced with unfunded state mandates imposed through stormwater permits.

SB 231 reads like a legal brief. This was no accident. The bill was specifically enacted to overrule the decision in *Howard Jarvis Taxpayers Ass'n v. City of Salinas*, 98 Cal. App. 4th 1351 (2002). Whether SB 231 is ultimately successful in doing so remains to be seen.

Proposition 218 created Article XIII D, Section 6(c) of the California Constitution, which states in relevant part: "Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of



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the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area." Salinas interpreted this language to mean fees imposed to offset costs of stormwater pollution control could only be imposed with voter approval.

The *Salinas* decision put some local governments in a bind. State and regional water quality control boards were imposing increasingly more difficult and expensive permitting requirements for stormwater on local governments, while at the same time Salinas restricted their ability to impose or increase new fees without an election. Efforts to impose or increase stormwater fees through Prop.

218 elections were generally unsuccessful. SB 231's proponents argued that Salinas got it wrong, that stormwater fees are properly characterized as fees for "sewer" and "water" related services, and the Legislature was simply fixing a mistake in statutory construction. The problem in that line of argument is that the Salinas court was interpreting constitutional text, not statutory. SB 231's author has cautioned against immediate use of the authority provided by SB 231 because of likely legal challenge.

Meanwhile, local governments have mixed views on SB 231. The bill could make it easier to raise revenue, but it could also frustrate reimbursement requests local governments have filed with the California Commission on State Mandates. The commission has cited SB 231 as a possible basis for denying stormwater related claims, arguing stormwater costs, per SB 231, are no longer an unfunded mandate since they can be passed on directly to ratepayers.

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