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# Understanding Proposition 218



# ***UNDERSTANDING PROPOSITION 218***

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## ***INTRODUCTION***

Proposition 218 significantly changes local government finance. This constitutional initiative—approved by the state’s voters in November 1996—applies to each of California’s nearly 7,000 cities, counties, special districts, schools, community college districts, redevelopment agencies, and regional organizations.

The purpose of this guide is to help the Legislature, local officials, and other parties understand Proposition 218, including the actions local governments must take to implement it. The guide includes five chapters:

- ◆ How Proposition 218 Changes Local Finance and Governance.
- ◆ Understanding the Vocabulary of Proposition 218.
- ◆ Are Existing Revenues Affected by Proposition 218?
- ◆ What Must a Local Government do to Raise New Revenues?
- ◆ May Residents Overturn Local Taxes, Assessments, and Fees?

Finally, the appendix to this guide summarizes major areas of uncertainty pertaining to Proposition 218 (some of which the Legislature may wish to address), and includes the text of Proposition 218 (now Article XIII C and D of the California Constitution).

## ***CHAPTER 1***

### **How Proposition 218 Changes Local Finance and Governance**

Nearly two decades ago, Proposition 13 sharply constrained local governments’ ability to raise property taxes, the mainstay of local government finance. Proposition 13 also specified that any local tax imposed to pay for specific governmental programs—a “special tax”—must be approved by two-thirds of the voters.

Since that time, many local governments have relied increasingly upon *other* revenue tools to finance local services, most notably: assessments, property-related fees, and a variety of small general purpose taxes (such as hotel, business license, and utility user taxes). It is the use of *these* local revenue tools that is the focus of Proposition 218.

In general, the intent of Proposition 218 is to ensure that all taxes and most charges on property owners are subject to voter approval. In addition, Proposition 218 seeks to curb some perceived abuses in the use of assessments and property-related fees, specifically the use of these revenue-raising tools to pay for general governmental services rather than property-related services.

In this chapter, we provide an overview and perspective on the impact of Proposition 218 on local finance and governance.

## PROPOSITION 218 CHANGES LOCAL GOVERNMENT FINANCE

Proposition 218 makes several important changes regarding local government finance. Figure 1 summarizes our observations regarding their fiscal impact.

**Figure 1**

### Proposition 218's Impact on Local Finance

- ◆ The measure's fiscal impact cannot be fully ascertained until the uncertainty regarding some of its provisions are resolved.
- ◆ Most local revenues are not affected.
- ◆ The impact on certain local governments could be substantial.
- ◆ Local government revenue reductions will begin in 1997.
- ◆ In the long term, local government revenues are likely to be somewhat lower and come from different sources.

### Some Uncertainty Regarding Proposition 218's Provisions

Proposition 218's requirements span a large spectrum, including local initiatives, water standby charges, legal standards of proof, election procedures, and the calculation and use of sewer assessment revenues. Although the measure is quite detailed in many respects, some important provisions are not completely clear.

In this guide, we provide our interpretation of the measure's requirements. This interpretation is based on our extensive review

of the measure, as well as consultations with the measure's drafters, local government officials, and legal counsel. In some cases, however, we are not able to fully ascertain the meaning or scope of a Proposition 218 requirement. We believe our uncertainty—frequently shared by other analysts of the measure—will be resolved only when the Legislature enacts implementing statutes or court rulings become available.

Accordingly, throughout this guide we discuss Proposition 218 as we understand it. Where other parties have different opinions or the measure's requirements are not clear, we provide this information. Finally, we provide in Appendix I a summary of the areas in which clarifying legislative or judicial action may be necessary.

### Most Local Revenues Are Not Affected

California local governments raise more than \$50 billion annually from taxes, assessments, and fees. As Figure 2 shows, most of these local revenues are *not* affected directly by Proposition 218. Instead, Proposition 218's provisions apply to a relatively small subset of local government revenues.

Given the relatively small number and dollar value of local revenue sources that are affected by Proposition 218, we think it is highly unlikely that the measure could cause more than a 5 percent annual decrease in *aggregate* local government own-source revenues.

**Figure 2**

**Which Local Revenues Are Affected by Proposition 218?**

Affected	Not Directly Affected
<b>Taxes</b>	
New and some recently imposed "general" taxes.	Property taxes. Bradley-Burns sales taxes. Special taxes. Vehicle license taxes. Redevelopment revenues. Mello-Roos taxes. Timber taxes.
<b>Assessments</b>	
All new or increased assessments. Some existing assessments.	Most existing assessments.
<b>Fees</b>	
Property-related fees. (Fees imposed as an "incident of property ownership," not including gas, electric, or developer fees.)	Fees that are <i>not</i> property-related. Gas and electric fees. Developer fees.

**Impact on Certain Local Governments May Be Substantial**

The actual impact of Proposition 218 on local public services may be greater than our 5 percent estimate would suggest, however, for a variety of reasons. First, some governments are highly reliant upon the types of assessments and fees that would

be restricted by this measure. These local governments—typically, small, newly incorporated cities, and library, fire, and park and recreation special districts—may sustain revenue reductions of much more than 5 percent. Some special districts also lack the authority to propose taxes to replace the lost assessment and fee revenues.

Second, many local governments have limited flexibility to reduce programs when revenues decline. Most major county programs, for example, are subject to state and federal mandates and spending requirements. As a result, relatively small revenue losses can trigger significant reductions to the few programs over which the local government has control.

Finally, many local governments will experience both revenue reductions *and* cost increases to comply with Proposition 218. For example, some local governments will lose part of their assessment and fee revenues, and have to pay:

- ◆ Assessments charges to other local governments.
- ◆ Increased election, property-owner notification, and administrative costs.

These increased costs will increase the fiscal impact of this measure on local government programs.

**Fiscal Impact Begins in 1997**

The fiscal impact of Proposition 218 will begin almost immediately. Within eight months of Proposition 218's passage, local governments will need to reduce or eliminate certain existing assessments and fees to meet the measure's requirements. (These

requirements are discussed in Chapter Three.) We estimate that these actions will reduce local government revenues by at least \$100 million in 1997-98.

Proposition 218 also requires local governments to place before the voters certain existing assessments and taxes. Unless the voters ratify these assessments and taxes, local governments will experience *additional* revenues losses, potentially exceeding \$100 million annually.

### Longer Term: Different Revenue Sources, Probably Less Money

Proposition 218 restricts local governments' ability to impose assessments and property-related fees—and requires elections to approve many local government revenue raising methods. Because of this, it is likely that over the long term local governments will raise fewer revenues from assessments, property-related fees, and some taxes.

Unless these reduced local revenues are replaced with other revenues, local government spending for local public services will decrease accordingly. What other revenues could offset these revenue reductions? It is likely that local governments will pursue one or more of the following sources of potential replacement revenues:

- ◆ Redevelopment revenues.
- ◆ Developer exactions.

- ◆ General taxes imposed on particular groups (such as business license, hotel occupancy, and sporting or entertainment admission taxes).
- ◆ Special taxes imposed on properties within small, discrete areas.
- ◆ Intergovernmental transfers.
- ◆ Non-property related fees.

**Limited Ability to Raise Replacement Revenues.** Local governments' ability to expand these six other revenue sources is not great. Various legal and practical restrictions limit a major expansion of redevelopment or developer exactions, for example. In addition, many local government observers believe that existing hotel and business taxes are already high and not all parts of the state have major entertainment or sporting centers. (We include these taxes on the above list because these taxes are not paid directly by most voters. Thus, the likelihood of their being approved by a majority of voters may be higher than other general taxes.)

Similarly, while local governments in California have had difficulty securing the requisite two-thirds vote to impose special taxes, it is likely that some additional special taxes will be approved. Special taxes probably are more likely to be adopted in small, discrete areas of a community where the commonality of interest is high, however, rather than on a community-wide basis. Thus, the likelihood of generating significant revenues from special taxes is not great.

Additional major revenues from the state or federal government also do not appear likely, given the fiscal limitations faced by both these level of governments. (Please see our November 1996

publication, *California's Fiscal Outlook*, for our projections of the state's fiscal condition.)

This leaves the last revenue source on our list: non-property related fees. Ultimately, the ability of local government to expand this revenue source turns on how the term “property-related” fee is defined by the Legislature or courts. If the definition of a property-related fee is broad, then local government's ability to replace revenues lost by Proposition 218 is limited. Conversely, if this definition is narrow, then local government will have greater opportunities to replace lost revenues with expanded non property-related fees. (Even then, however, the state Constitution and statutes do not permit local government to charge fees in excess of costs.)

All in all, our review indicates that most local governments will have some ability to raise revenues to replace some of the funding lost by Proposition 218. This ability, however, is limited. Accordingly, we expect that in the long term, local governments will raise somewhat less revenues than they would have otherwise—and local government revenues will come from somewhat different sources. These revenue reductions will result in lower payments by people and businesses to government—and decreased spending for local public services.

### **PROPOSITION 218 CHANGES LOCAL GOVERNANCE**

In addition to changing local finance, Proposition 218 changes the governance roles and responsibilities of local residents and property owners, local government, and potentially, the state. While

the full ramifications of these changes will not be known for years to come, some elements are already apparent.

### **Increased Role for Local Residents And Property Owners**

Prior to Proposition 218, the local resident and property owner's role in approving most new local government revenue-raising measures was minimal. Local governments typically raised new funds by imposing new or increased assessments or fees, or in the case of charter cities, general-purpose taxes on utility use, business licences, and hotel occupancy. In most cases, California residents or property owners could object to these taxes or charges at a public hearing or during a statutory protest procedure, but these taxes or charges were not placed on the ballot. In short, locally elected governing bodies held most of the power over local revenue raising.

Proposition 218 shifts most of this power over taxation from locally elected governing boards to residents and property owners. In order to fulfill this considerable responsibility, local residents and property owners will need greater information on local government finances and responsibilities. Even with this information, however, the task of local residents and property owners will be difficult, given the frequently confusing manner in which program responsibilities are shared between state and local government, and among local governments.

### **Local Government Remains Responsible for Expenditures**

Local government's powers, in contrast, become significantly constrained. While locally elected governing boards continue to be fully responsible for decision-making regarding the expenditure of public funds, they now have very little authority to raise funds without a vote of the residents or property owners. In addition, Proposition 218 limits local government's authority to call an election to raise revenues. Specifically, except in cases of emergency, local governments now may hold elections on general taxes only once every two years (consolidated with an election for members of the governing board.) Moreover, Proposition 218 limits the amount of an assessment or property-related fee that may be put before the property owners for a vote.

### **State Government Role May Expand**

Proposition 218 may also alter the state's role and responsibilities regarding local government in several important ways. First, the Legislature will be asked to play a large role in interpreting Proposition 218's requirements, and helping set the rules regarding local government finance. In some cases, local governments are likely to ask for urgency legislation to enact these measures because the deadline for compliance with some Proposition 218 provisions is July 1, 1997.

Second, the Legislature will probably receive requests for fiscal assistance from local governments. These requests are likely to begin in the spring of 1997, as the fiscal consequences of the assessment and fee restrictions become apparent. Local

governments are likely to turn to the state because it has more fiscal flexibility than local government. For example, the Legislature may raise taxes at any time with a two-thirds vote of its members.

Finally, any effort to restructure state-local program responsibilities is now more complicated. Specifically, the Legislature will have less flexibility to realign programs in a manner that increases local government responsibility without providing a direct subvention of state funds. This is because local governments have little or no flexibility to adjust their own revenues.



## CHAPTER 2

# Understanding the Vocabulary of Proposition 218

Any discussion of Proposition 218 requires an explanation of several local government finance words and terms. This chapter explains the vocabulary.

### WHAT IS A TAX?

Taxes are government's most flexible revenue raising tool. A tax is a charge on an individual or business that pays for governmental services or facilities that benefit the public broadly. There need not be any direct relationship between how much tax a person pays and how much service he or she receives from government. Example of taxes include the property tax, sales tax, business licence tax, hotel occupancy tax, and utility users tax.

#### Special Tax Versus General Tax

A tax is called a "special" tax if its revenues are used for specific purposes and a "general" tax if its revenues may be used for any governmental purpose. This distinction is important because it determines whether a tax must be approved by a majority vote of the electorate (general tax)—or a two-thirds vote (special tax).

### WHAT IS AN ASSESSMENT?

An assessment is a charge levied on property to pay for a public improvement or service that benefits property. Assessments are usually collected on the regular property tax bill. They are different, however, from the regular 1 percent property tax and property tax debt overrides in that assessment rates are not based on the value of the property. Assessments are also different from another charge that sometimes is placed on the property tax bill, parcel taxes. Unlike parcel taxes, assessments typically were not voter approved prior to Proposition 218. In addition, assessment rates were linked to the cost of providing a service or improvement, whereas parcel taxes could be set at any amount. Typical assessments include those for flood control improvements, streets, and lighting and landscaping.

### WHAT IS A FEE?

A fee is a charge imposed on an individual or business for a service or facility provided directly to an individual or business. Local governments charge fees for a wide range of purposes, from park entry fees to building plan check fees. The amount of the fee may not exceed the cost of government to provide the service.

#### A New Term: "Property-Related Fee"

Proposition 218 restricts property-related fees, defined as fees imposed "as an incident of property ownership." At this time, there is no consensus as to which fees meet this definition. The drafters of Proposition 218 indicate that it was their intent to include most

fees commonly collected on monthly bills to property owners, such as those for water delivery, garbage service, sewer service, and storm water management fees. Other analysts of Proposition 218 contend that fees that vary by level of service (for example, a fee for metered water usage) should not be considered a property-related fee, because it is based on service usage, rather than property ownership. Because Proposition 218 does not restrict nonproperty-related fees, the definition of this term will be an important and sensitive issue for the Legislature and courts.

### OVERLAPPING TERMS

While the terms tax, assessment, and fee are each legally distinct, in practice they overlap. For example, communities in California may finance streets from taxes, assessments, and/or fees. In addition, local government officials sometimes call a charge one term, when it was legally adopted as another. As a result, the work of sorting out whether a particular charge must comply with Proposition 218's requirements for a tax, assessment, or fee will not always be easy.

## CHAPTER 3

### Are Existing Revenues Affected by Proposition 218?

Local governments must bring their existing taxes, assessments and property-related fees into conformity with Proposition 218. The deadline for each of these actions is:

- ◆ July 1, 1997—for assessment and property-related fees.
- ◆ November 6, 1998—for taxes.

Below, we discuss Proposition 218's requirements regarding *existing* taxes, assessments, and fees. (The requirements for *new* or *increased* revenue raising tools is the topic of the next chapter.) After each section, we answer some common questions regarding Proposition 218's requirements.

### REQUIREMENTS FOR EXISTING TAXES

Proposition 218 does not affect existing special taxes or most general taxes. Proposition 218 affects only those *general* taxes that were imposed in 1995 or 1996 without a vote of the people.

In order to continue such a tax, Proposition 218 requires the governing body to place the tax before the voters by November 6, 1998. Unless the governing body unanimously votes to declare the election an emergency, the tax election must be consolidated

with a regularly scheduled election for members of the governing body. The local government may continue an existing tax if it is approved by a majority vote.

### Questions

***Are general taxes imposed before 1995, without a vote of the people, safe from challenges?***

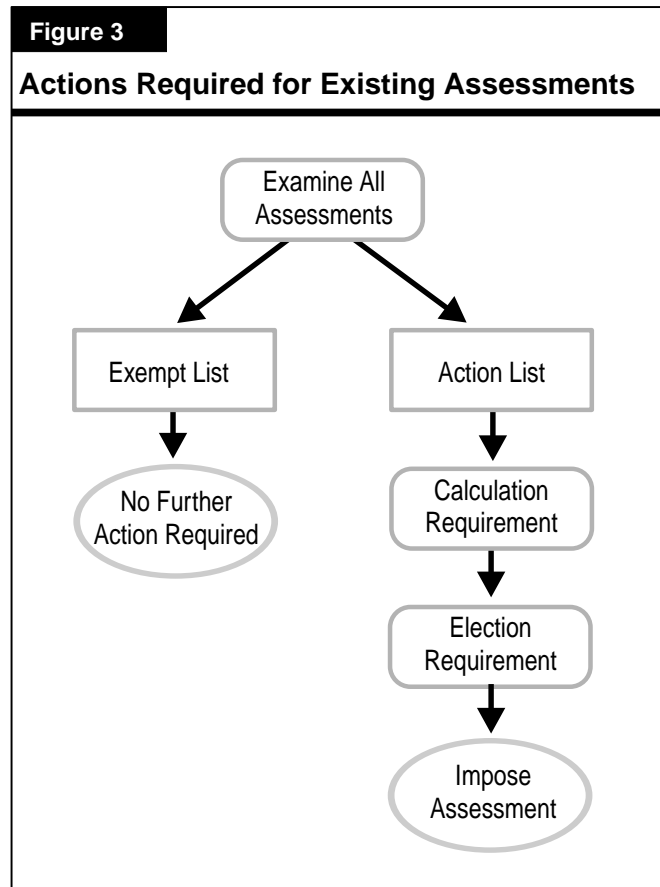
No. Our review indicates that general law cities and counties that imposed general taxes in the early 1990s, without a vote of the people, continue to be vulnerable to a challenge that they did not place their tax on the ballot as required by Proposition 62. In 1995, the California Supreme Court reversed earlier lower court decisions and found Proposition 62 to be constitutional.

***Are Mello-Roos taxes affected?***

No. Mello-Roos taxes are not affected by Proposition 218. Mello-Roos taxes—usually imposed on new subdivisions to pay for infrastructure—are special taxes and already require a two-thirds vote. There are a very limited number of cases, however, where a local government has used Mello-Roos law to impose an *assessment* without a two-thirds vote. We believe local governments must bring these assessments into compliance with Proposition 218's assessments provisions (discussed below).

## REQUIREMENTS FOR EXISTING ASSESSMENTS

Local governments must review all existing assessments, including standby-charges (which the measure defines as assessments). Figure 3 (see next page) shows the actions local governments must take to bring their existing assessments into compliance with Proposition 218.



**The Examination Requirement:  
Many Assessments Will Qualify for Exempt List**

Local government must examine each assessment to determine whether it meets one of the conditions for placement on the “exempt list.” These conditions are:

- ◆ The assessment was previously approved by voters—or by all the property owners at the time the assessment was created.
- ◆ All of the assessment proceeds are pledged to bond repayment.
- ◆ All the assessment proceeds are used to pay for sidewalks, streets, sewers, water, flood control, drainage systems, or “vector control” (such as mosquito control).

Our review indicates that more than half of all existing assessments are likely to be exempt. Generally, this is because the assessment’s funds are used for one of the approved purposes or are pledged to bond repayment—or the assessment was agreed to by a land developer, the sole property owner at the time the assessment was established.

If an assessment is not exempt, then the local government must eliminate the assessment or bring it into compliance with Proposition 218’s assessment calculation and election requirements (described below). Our review indicates that the types of assessments that are not likely to satisfy any of the conditions for exemption are: fire, lighting and landscaping, and park and recreation assessments.

### **The Calculation Requirement: One of Proposition 218’s Most Significant Changes**

Local governments must recalculate all existing assessments that do not qualify for the exempt list. Our review indicates that in many cases, Proposition 218’s provisions regarding the calculation of assessments will result in local governments lowering

the amount they collect in assessments from property owners, or eliminating the assessment. We identify the specific calculation provisions below.

**First: Determine If a Project or Service Provides Special Benefits.** The local government must determine whether property owners would receive a “special benefit” from the project or service to be financed by the assessment. Proposition 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 would not provide such a special benefit, Proposition 218 states that it may not be financed by an assessment. Our review indicates that local governments will find it difficult to demonstrate that some existing assessments for ambulance, library, police, business improvement, and other services satisfy this tightened definition of special benefit. As a consequence, some existing assessments may need to be eliminated.

**Second: Estimate the Amount of Special Benefit.** Local government must use a professional engineer’s report to estimate the *amount* of special benefit landowners would receive from the project or service, as well as the *amount* of “general benefit.” This step is needed because Proposition 218 allows local government to recoup from assessments only the proportionate share of cost to provide the special benefit. That is, if special benefits represent 50 percent of total benefits, local government may use assessments to recoup half the project or service’s costs. Local governments must use other revenues to pay for any remaining costs. This limitation on the use of assessments represents a major change from the law prior to Proposition 218, when local governments could

recoup from assessments the costs of providing both general and special benefits.

**Third: Set Assessment Charges Proportionally.** Finally, the local government must set individual assessment charges so that no property owner pays more than his or her proportional share of the total cost. This may require the local government to set assessment rates on a parcel-by-parcel basis. Properties owned by schools and other governmental agencies—previously exempt from some assessment charges—now must pay assessments.

### **Election Requirement: All Property-Owners Vote on Assessments**

Local governments must mail information regarding assessments to all property owners. (Prior to Proposition 218, large communities could publish assessment information, rather than mail it to every property owner.) Each assessment notice must contain a mail-in ballot for the property owner to indicate his or her approval or disapproval of the assessment.

After mailing the notices, the local government must hold a public hearing. At the conclusion of the hearing, the local government must tabulate the ballots, weighing them in proportion to the amount of the assessment each property owner would pay. (For example, if homeowner Jones would pay twice as much assessment as homeowner Smith, homeowner Jones' vote would "count" twice as much as homeowner Smith's vote.) The assessment may be imposed only if 50 percent or more of the weighted ballots support the assessment.

### **Questions**

#### ***Would part, or all, of an assessment be exempt if most of its proceeds are used for an approved program?***

Probably not. Proposition 218 states that an assessment is exempt if its proceeds are used *exclusively* for one or more of seven approved programs. However, the measure does not define what costs may be included under these approved programs. Thus, it is not clear if an assessment that funds streets (an approved program) and curbs or street lighting (not identified as approved programs) is exempt. Legislative action may be needed to clarify this.

#### ***Is the difference between "general benefit" and "special benefit" clear?***

No. Proposition 218 defines a "special benefit" as a distinct benefit to real property in a specific area. All other benefits—including benefits to people's health, education, or safety, or general enhancements to property values—are considered "general benefits." While these two benefits are distinct in concept, in practice they may be difficult to distinguish. Because of the importance of the term "special benefit," legislative or court action may be needed to clarify its definition.

#### ***Do renters get to vote?***

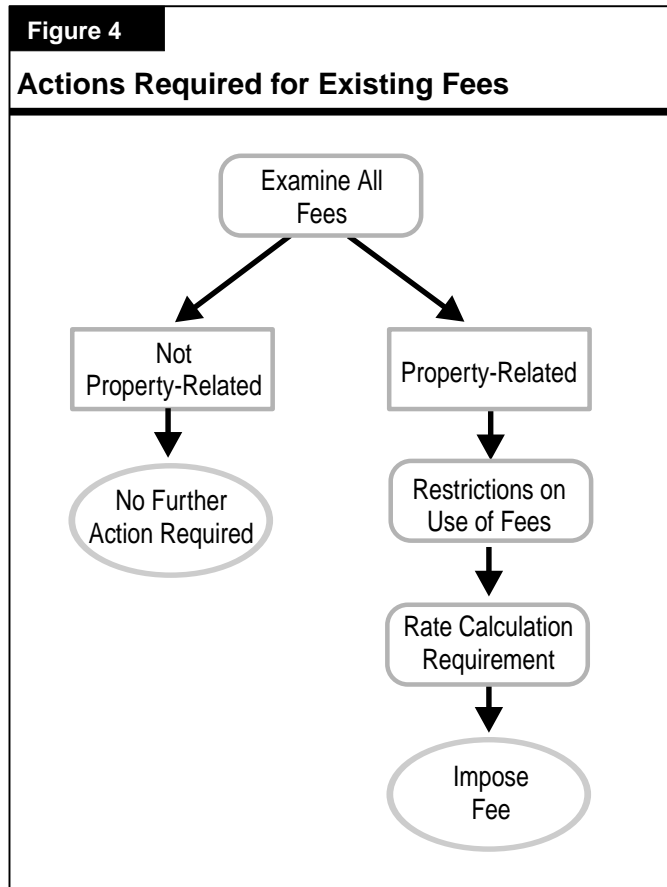
Renters may vote on an assessment if their lease agreement specifies that they are responsible for paying the assessment. This type of provision in a lease agreement is more common for commercial properties than for residential properties.

#### ***Who gets to vote when an assessment is to be levied on public property or properties with multiple owners?***

This is not addressed in the measure. Thus, it would require clarification.

## REQUIREMENTS FOR EXISTING FEES

As with assessments, local governments must complete a multi-step review of all fees. Figure 4 summarizes the process.



## Examination Requirement: Identifying Property-Related Fees

Local government must begin by examining all existing fees to determine whether they are “property-related” fees, imposed as an “incident of property ownership.” (We discuss this term and the controversy surrounding it in Chapter Two). As Figure 4 shows, if a fee is *not* property-related, then the local government need not take any further action regarding the fee. Conversely, if the fee is property-related, then the local government must make sure that the fee complies with Proposition 218's restrictions on use of fee revenues and the rate calculation requirements. The deadline for these actions is July 1, 1997.

## New Restrictions on Use of Fees

Proposition 218 specifies that no property-related fee may be:

- ◆ Levied to pay for a general governmental service, such as police or fire service.
- ◆ Imposed for a service not used by, or immediately available to, the property owner.
- ◆ Used to finance programs unrelated to the property-related service.

In order to comply with these restrictions, local governments will need to eliminate or reduce some existing fees. For example, some small cities currently charge property owners fees for ambulance or fire service. Proposition 218 does not permit governments to impose property-related fees for these purposes.

Similarly, some cities collect “franchise fees” or “in-lieu property taxes” from their water departments and deposit these revenues into their general funds. The cost of these franchise fees and taxes is passed onto local residents in terms of higher water fees. If water fees are considered property-related fees, then Proposition 218 would forbid this diversion of fee revenues. (Some local government observers believe that this diversion of fee revenues was impermissible *prior* to Proposition 218, as well.)

***Possible Local Government Response to Fee Restrictions.***

In some cases, it may be possible for a local government to restructure a property-related fee so that it would no longer be considered a fee imposed “as an incident of property ownership.” For example, a mandatory per parcel garbage collection fee may be considered a property-related fee, while an optional garbage collection service charge may not. Similarly, some local governments may be able to show that their franchise fee or in-lieu property tax represents their water department’s reasonable share of central administrative expenses. If so, then Proposition 218 would not prohibit this transfer of revenues from the water department. Finally, some local governments may elect to privatize certain functions formally financed by property-related fees. Proposition 218 imposes no limit on private fees.

**Fee Rate Calculation Requirement**

After complying with Proposition 218’s restrictions on the use of property-related fees, the local government must make sure that its property-related fees comply with the measure’s calculation requirements. Specifically, local governments must make sure

that no property owner’s fee is greater than the proportionate cost to provide the property-related service to his or her parcel. Like assessments, this requirement may result in local governments setting property-related fee rates on a block-by-block, or parcel-by-parcel basis.

This fee rate calculation requirement—sometimes called the “proportionality” requirement—will make it difficult for local government to continue certain programs, such as those that offer reduced rates to low-income residents. This is because local governments typically finance these lower rates by charging higher rates to other property-owners. If these fees are considered property-related fees, the higher rates would not be permitted by Proposition 218. In order to continue these programs in the future, therefore, the local government would need to offset the cost of the program with other revenues, such as general tax revenues.

**Question**

***Are regulatory fees—such as rent control, alarm, and weed abatement fees—considered property-related fees?***

This is not clear. Generally, we interpret Proposition 218’s term “property-related fees” as including all fees that a property-owner has no feasible way to avoid. That is, a fee is property-related if land could not be owned and used without paying the fee. Accordingly, we do not consider fees for optional activities, such as the registration of alarm systems or the removal of weeds from neglected parcels, to be property-related. Rent control administrative fees are a closer call. Generally, we think these fees would be considered property-related if there were no practical way that the owner could avoid the fee, short of selling the property or fundamentally changing its use. Clearly, the definition of property-related fees will be a sensitive and important issue for the Legislature and courts.

**CHAPTER 4**

**What Must a Local Government Do to Raise New Revenues?**

In order to raise a new tax, assessment, or property-related fee, or to increase an existing one, local governments must comply with many of the same provisions discussed in the previous chapter. In general, these requirements are that local governments may use assessments and property-related fees only to finance projects and services that directly benefit property—and that most revenue-raising measures be approved in an election. Figure 5 (see next page) summarizes the vote required in these elections.

This chapter explains the steps local government must take to raise a new tax, assessment or property-related fee, or to increase an existing one.

**REQUIREMENTS FOR NEW TAXES**

In order to impose or increase a tax, local government must comply with the following provisions:

- ◆ All general taxes must be approved by a majority vote of the people. (A 1986 statutory initiative—Proposition 62—previously imposed this vote requirement

**Figure 5**

**New or Increased Taxes, Assessment, and Fees  
What Vote is Needed?**

Type	Vote Needed	Who Votes	Vote Requirement
<b>Taxes</b>			
General	Yes	All voters in community or affected area.	Majority
Special	Yes	All voters in community or affected area.	Two-thirds
<b>Assessments</b>			
All	Yes	Property owners (and renters responsible for paying assessments) in affected area.	Majority, weighted in proportion to assessment liability.
<b>Fees</b>			
General, not property related	No	N/A	N/A
Property related	Yes, for any service other than water, sewer, or refuse collection.	Local government may choose: <ul style="list-style-type: none"> <li>• Property owners (and renters responsible for paying fee) in affected area, or</li> <li>• Electorate in the affected area.</li> </ul>	Majority of property owners or two-thirds of electorate. Local governments may weight ballots in proportion to fee liability.



on *general law* cities and counties. Proposition 218 expands this requirement to include *charter* cities, such as Los Angeles, Oakland, and San Francisco.)

- ◆ Elections for general taxes must be consolidated with a regularly scheduled election for members of the local governing body. (In an emergency, this provision may be waived by a unanimous vote of the governing body.)
- ◆ Any tax imposed for a specific purpose is a “special tax,” *even if its funds are placed into the community’s general fund*. (Prior to Proposition 218, all taxes placed into a community’s general fund were commonly considered general taxes, requiring only a majority vote.)

## REQUIREMENTS FOR NEW ASSESSMENTS

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

As a practical matter, this requirement will mean that programs that benefit people, rather than specific properties—such as libraries, mosquito abatement, recreation programs, police protection, and some business improvement programs—must be financed by general or special taxes or by other nonassessment revenues.

## Questions

***Must a local government comply with both Proposition 218’s assessment approval process and the existing statutory process for assessment approval?***

Following both of these assessment approval processes is likely to be duplicative and confusing to property owners. Most local government observers agree that some legislative action to reconcile the two assessment approval processes is needed.

***Is an assessment considered “new or increased” if it is raised by a cost-of-living factor that was part of the assessment’s rate structure?***

This is not clear. Proposition 218 states that a *tax* is not to be considered new or increased if it is increased to a level previously approved by the voters. However, the measure does not include any such provision regarding assessments or fees. It is possible that any increase in assessments may be subject to the new calculation and election requirements.

## REQUIREMENTS FOR NEW FEES

To impose a new or increased property-related fee, local government must comply with the fee restriction and fee rate calculation requirements discussed in the last chapter.

Local governments must also:

- ◆ Mail information regarding the proposed fee to every property owner.
- ◆ Hold a hearing at least 45 days after the mailing.

- ◆ Reject the proposed fee if written protests are presented by a majority of the affected property owners.
- ◆ Hold an election on any property-related fee, other than a fee for water, sewer, or refuse collection. (Figure 5 shows the vote required in these elections.)

As a practical matter, local governments will find it much more difficult—and expensive—to impose or increase property-related fees. In some cases, local governments are probably more likely to try to raise revenues through non property-related fees or taxes.

### Question

***Could a local government impose a charge on property owners that is not an assessment, tax, or property-related fee?***

No. Proposition 218 states that all charges on property as an incident of property ownership must be a tax, assessment, or property-related fee. Proposition 218 further states that if such a charge on property is not a tax or an assessment, it is a property-related fee.

## CHAPTER 5

### May Residents Overturn Local Taxes, Assessments, and Fees?

Proposition 218 expands California residents' power to challenge local revenue raising measures.

#### GREATER INITIATIVE POWERS

Prior to Proposition 218, the extent to which local residents could use an initiative to challenge local government revenue raising methods was not certain. In a 1995 case, *Rossi v. Brown*, the California Supreme Court ruled that people had the power to use the initiative to repeal a minor tax. There have been no court rulings, however, addressing the question of whether an initiative may be used to repeal a more substantial revenue source.

Proposition 218 eliminates any ambiguity regarding the power of local residents to use the initiative by stating that residents of California shall have the power to repeal or reduce *any* local tax, assessment, or fee. In addition, the measure forbids the Legislature and local governments from imposing a signature requirement for local initiatives that is higher than that applicable to statewide statutory initiatives. As a consequence of these provisions, the only limits on local residents' ability to overturn local revenue raising

measures appear to be those in the federal constitution, such as the federal debt impairment clause.

### Question

*Could a local initiative or lawsuit eliminate a revenue stream that is pledged to bond repayment?*

This question has evoked considerable controversy. Generally, many bond specialists indicate that the debt impairment clause in the federal constitution would prevent local residents from eliminating a new or existing revenue stream if that action would jeopardize the security of bonded indebtedness. Some local government observers, however, would like the Legislature to place a time limit on local initiatives or take other action to provide greater security to bond holders.

## SHIFT OF BURDEN OF PROOF

Prior to Proposition 218's passage, the courts allowed local governments significant flexibility in determining fee and assessment amounts. A business or resident challenging the validity of a fee or assessment carried the "burden of proof" to show the court that the fee or assessment was illegal. Proposition 218 changed this legal standard by shifting the burden of proof to local governments. Now local governments must prove that any disputed fee or assessment charge is legal.

## APPENDIX I

### Areas in Which Legislative or Judicial Clarification May Be Needed

As we discuss throughout this guide, while Proposition 218 is quite detailed in many respects, some important provisions are not completely clear. This appendix summarizes the major questions regarding Proposition 218 that must be resolved so that local governments can begin implementation.

Because Proposition 218 sets a July 1, 1997 deadline for local governments to bring existing fees and assessments into conformity with the measure's requirements, legislative or judicial clarification on questions related to assessments and fees is needed as soon as possible.

#### PROPERTY-RELATED FEES

- ◆ What is included in the definition of a property-related fee?
- ◆ Are water charges that are based on metered use of water property-related fees?
- ◆ Are regulatory fees, such as rent control administrative fees, property-related fees?
- ◆ Are lease payments and other such charges on government-owned assets property-related fees?

- ◆ How precisely must local government allocate shares of costs for a property-related service? Can local government set general fee rate categories, or must local government determine the actual cost of service to every parcel?

## ASSESSMENTS

- ◆ What is a “special benefit” and how can it be distinguished from a “general benefit?”
- ◆ Existing assessments used exclusively for sidewalks, streets, sewers, water, flood control, drainage systems, and vector control are exempt from the measure’s calculation and election requirements. How broadly should these exemptions be interpreted?
- ◆ How precisely must local government allocate shares of costs for an assessment? Can local government set general assessment rate categories, or must local government determine the actual cost of service to every parcel?
- ◆ If an existing assessment is increased by a formula that was set forth at the time the existing assessment was imposed, must the assessment comply with the measure’s calculation and election requirements? Similarly, need the measure go through these processes again if a *future* assessment is increased by a formula set forth at the time the new assessment was imposed?
- ◆ How should the existing statutory assessment approval process be reconciled with Proposition 218’s assessment approval process?

- ◆ Some assessments are annually re-imposed by local government. Must a local government annually repeat the calculation and election procedures required by Proposition 218?
- ◆ If an assessment that is annually re-imposed by local government is currently eligible for the exempt list, must it comply with Proposition 218’s calculation and election procedures when it is re-imposed next year?

## ELECTIONS

- ◆ What procedures should govern the assessment and fee elections?
- ◆ Who may vote on referendums to repeal assessments, fees, or taxes?
- ◆ How will a local government determine whether a renter is eligible to vote?
- ◆ Who gets to vote when a parcel is owned by multiple parties, or by a governmental entity?

## TAXES

- ◆ Are Mello-Roos taxes affected in any way? Similarly, how should assessments imposed under Mello-Roos law be treated?
- ◆ Is the measure’s requirement that certain existing taxes be ratified by the voters an unconstitutional referendum on taxes?

**DEBT**

- ◆ Could a local initiative jeopardize a revenue stream pledged to the payment of existing (or future) debt?

**APPENDIX II****Text of Proposition 218**

This initiative measure adds Articles XIII C and D to the California Constitution.

**RIGHT TO VOTE ON TAXES ACT**

**SECTION 1. TITLE.** This act shall be known and may be cited as the "Right to Vote on Taxes Act."

**SECTION 2. FINDINGS AND DECLARATIONS.** The people of the State of California hereby find and declare that Proposition 13 was intended to provide effective tax relief and to require voter approval of tax increases. However, local governments have subjected taxpayers to excessive tax, assessment, fee and charge increases that not only frustrate the purposes of voter approval for tax increases, but also threaten the economic security of all Californians and the California economy itself. This measure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent.

**SECTION 3. VOTER APPROVAL FOR LOCAL TAX LEVIES.** Article XIII C is added to the California Constitution to read:

**ARTICLE XIII C**

*SECTION 1. Definitions. As used in this article:*

*(a) "General tax" means any tax imposed for general governmental purposes.*

*(b) "Local government" means any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity.*

*(c) "Special district" means an agency of the state, formed pursuant to general law or a special act, for the local performance of governmental or proprietary*

functions with limited geographic boundaries including, but not limited to, school districts and redevelopment agencies.

(d) "Special tax" means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund.

**SEC. 2. Local Government Tax Limitation.** Notwithstanding any other provision of this Constitution:

(a) All taxes imposed by any local government shall be deemed to be either general taxes or special taxes. Special purpose districts or agencies, including school districts, shall have no power to levy general taxes.

(b) No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. A general tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.

(c) Any general tax imposed, extended, or increased, without voter approval, by any local government on or after January 1, 1995, and prior to the effective date of this article, shall continue to be imposed only if approved by a majority vote of the voters voting in an election on the issue of the imposition, which election shall be held within two years of the effective date of this article and in compliance with subdivision (b).

(d) No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved.

**SEC. 3. Initiative Power for Local Taxes, Assessments, Fees and Charges.** Notwithstanding any other provision of this Constitution, including, but not limited to, Sections 8 and 9 of Article II, the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge. The power of initiative to affect local taxes, assessments, fees and charges shall be applicable to all local governments and neither the Legislature

nor any local government charter shall impose a signature requirement higher than that applicable to statewide statutory initiatives.

**SECTION 4. ASSESSMENT AND PROPERTY RELATED FEE REFORM.**

Article XIII D is added to the California Constitution to read:

**ARTICLE XIII D**

**SECTION 1. Application.** Notwithstanding any other provision of law, the provisions of this article shall apply to all assessments, fees and charges, whether imposed pursuant to state statute or local government charter authority. Nothing in this article or Article XIII C shall be construed to:

(a) Provide any new authority to any agency to impose a tax, assessment, fee, or charge.

(b) Affect existing laws relating to the imposition of fees or charges as a condition of property development.

(c) Affect existing laws relating to the imposition of timber yield taxes.

**SEC. 2. Definitions.** As used in this article:

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

(b) "Assessment" means any levy or charge upon real property by an agency for a special benefit conferred upon the real property. "Assessment" includes, but is not limited to, "special assessment," "benefit assessment," "maintenance assessment" and "special assessment tax."

(c) "Capital cost" means the cost of acquisition, installation, construction, reconstruction, or replacement of a permanent public improvement by an agency.

(d) "District" means an area determined by an agency to contain all parcels which will receive a special benefit from a proposed public improvement or property-related service.

(e) "Fee" or "charge" means any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service.

(f) "Maintenance and operation expenses" means the cost of rent, repair, replacement, rehabilitation, fuel, power, electrical current, care, and supervision necessary to properly operate and maintain a permanent public improvement.

(g) "Property ownership" shall be deemed to include tenancies of real property where tenants are directly liable to pay the assessment, fee, or charge in question.

(h) "Property-related service" means a public service having a direct relationship to property ownership.

(i) "Special benefit" means a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute "special benefit."

*SEC. 3. Property Taxes, Assessments, Fees and Charges Limited. (a) No tax, assessment, fee, or charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except:*

*(1) The ad valorem property tax imposed pursuant to Article XIII and Article XIII A.*

*(2) Any special tax receiving a two-thirds vote pursuant to Section 4 of Article XIII A.*

*(3) Assessments as provided by this article.*

*(4) Fees or charges for property related services as provided by this article.*

*(b) For purposes of this article, fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership.*

*SEC. 4. Procedures and Requirements for All Assessments. (a) An agency which proposes to levy an assessment shall identify all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed. The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property related service being provided. No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable,*

*and an agency shall separate the general benefits from the special benefits conferred on a parcel. Parcels within a district that are owned or used by any agency, the State of California or the United States shall not be exempt from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit.*

*(b) All assessments shall be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California.*

*(c) The amount of the proposed assessment for each identified parcel shall be calculated and the record owner of each parcel shall be given written notice by mail of the proposed assessment, the total amount thereof chargeable to the entire district, the amount chargeable to the owner's particular parcel, the duration of the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, together with 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 applicable to the completion, return, and tabulation of the ballots required pursuant to subdivision (d), including a disclosure statement that the existence of a majority protest, as defined in subdivision (e), will result in the assessment not being imposed.*

*(d) Each notice mailed to owners of identified parcels within the district pursuant to subdivision (c) shall contain a ballot which includes the agency's address for receipt of the ballot once completed by any owner receiving the notice whereby the owner may indicate his or her name, reasonable identification of the parcel, and his or her support or opposition to the proposed assessment.*

*(e) The agency shall conduct a public hearing upon the proposed assessment not less than 45 days after mailing the notice of the proposed assessment to record owners of each identified parcel. At the public hearing, the agency shall consider all protests against the proposed assessment and tabulate the ballots. The agency shall not impose an assessment if there is a majority protest. A majority protest exists if, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. In tabulating the ballots, the ballots shall be weighted according to the proportional financial obligation of the affected property.*

(f) In any legal action contesting the validity of any assessment, the burden shall be on the agency to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large and that the amount of any contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question.

(g) Because only special benefits are assessable, electors residing within the district who do not own property within the district shall not be deemed under this Constitution to have been deprived of the right to vote for any assessment. If a court determines that the Constitution of the United States or other federal law requires otherwise, the assessment shall not be imposed unless approved by a two-thirds vote of the electorate in the district in addition to being approved by the property owners as required by subdivision (e).

SEC. 5. *Effective Date.* Pursuant to subdivision (a) of Section 10 of Article II, the provisions of this article shall become effective the day after the election unless otherwise provided. Beginning July 1, 1997, all existing, new, or increased assessments shall comply with this article. Notwithstanding the foregoing, the following assessments existing on the effective date of this article shall be exempt from the procedures and approval process set forth in Section 4:

(a) 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. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.

(b) 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. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.

(c) 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.

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

increases in those assessments shall be subject to the procedures and approval process set forth in Section 4.

SEC. 6. *Property Related Fees and Charges.* (a) *Procedures for New or Increased Fees and Charges.* An agency shall follow the procedures pursuant to this section in imposing or increasing any fee or charge as defined pursuant to this article, including, but not limited to, the following:

(1) The parcels upon which a fee or charge is proposed for imposition shall be identified. The amount of the fee or charge proposed to be imposed upon each parcel shall be calculated. The agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge.

(2) The agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners of each identified parcel upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.

(b) *Requirements for Existing, New or Increased Fees and Charges.* A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:

(1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.

(2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

(3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.



(4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4.

(5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners. Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership for purposes of this article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.

(c) *Voter Approval for New or Increased Fees and Charges.* 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 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. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures similar to those for increases in assessments in the conduct of elections under this subdivision.

(d) *Beginning July 1, 1997, all fees or charges shall comply with this section.*

**SECTION 5. LIBERAL CONSTRUCTION.** The provisions of this act shall be liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent.

**SECTION 6. SEVERABILITY.** If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining sections shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

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