



FACT SHEET

AB 2257

SUMMARY

AB 2257 would authorize public agencies to adopt procedures for the submittal and consideration of public comments regarding proposed water or sewer rates or assessments (fees). If an agency elects to adopt procedures, a person would be required to timely submit written comments that specify the grounds for alleging that the fees do not comply with Proposition 218 in order to challenge the fees in court. Public agencies would be required to provide written responses to all comments received before acting on the proposed fees. AB 2257 would also detail documents that would comprise the administrative record in the event of litigation.

BACKGROUND

California's water and sewer agencies provide essential government services for the benefit of communities, agriculture, industries, and the environment. Public agencies are responsible for ensuring a consistent and reliable water supply, safeguarding the quality of drinking water, planning, constructing, and maintaining infrastructure, collecting and treating wastewater, and much more.

With climate change presenting unprecedented challenges, these agencies also must adapt and enhance aging infrastructure to mitigate the impacts of increasingly frequent and severe climate-related events.

The revenue necessary for public agencies to fulfill their essential functions predominantly comes from service rates and assessments. While these agencies require financial stability to meet ever increasing demands, a rise in Proposition 218 litigation is making it increasingly difficult to ensure agencies can pass fair and reasonable rates to cover the costs of operations and investments. Oftentimes, these suits are filed without first having raised these alleged violations with the public agency

during the public notice-and-comment process leading up to the decision to adopt rates or assessment. When litigants avoid raising concerns with proposed rates or assessments during the ratemaking process, the public agencies cannot endeavor to resolve the dispute and avoid litigation. Surprise lawsuits have the potential to undermine an agency's ability to maintain stable budgets necessary to operate effectively.

EXISTING LAW

Proposition 218, or the "Right to Vote on Taxes Act," was approved by California voters in 1996. This initiative added to the California Constitution and imposed procedural and substantive requirements that govern how local agencies levy fees and charges to pay their costs to provide property-related services, like water and sewer service.

Proposition 218's procedural requirements mandate that an agency must mail written notice to property owners at least 45 days in advance of a public hearing for the ratemaking agency to consider any protests to the new or increased rates it has proposed for adoption. The hearing includes an opportunity for property owners to object to the proposed fee or charge (called a "protest"), and the agency must consider all protests received. If written protests against the proposed fee or charge are presented by a majority of property owners (called a "majority protest"), Proposition 218 prohibits the agency from imposing the fee or charge. If less than a majority protest, the agency must decide whether to adopt the rates as proposed, to reduce the rates, or to start over with a new ratemaking proposal.

Proposition 218's key substantive limit requires a local agency to demonstrate that any new or increased property-related fee or charge reasonably represents the cost of providing service.

One of the most fundamental rules governing the relationship between agencies and courts is the "exhaustion of remedies" principle, which requires individuals to raise concerns about proposed agency action by pursuing available agency procedures for addressing concerns before they may sue the agency in court. The exhaustion requirement serves several important purposes: (1) permitting the agency to resolve factual issues, apply its expertise, and exercise statutorily delegated remedies; (2) bolstering administrative autonomy; (3) promoting judicial economy; and (4) mitigating damages.

Finally, when a party challenges the validity of an administrative agency's legislative or quasi-legislative action, the general rule is that relevant evidence is confined to the record of proceedings before the legislative body. This rule, known as the "record review rule," comes from the California Supreme Court's holding in *Western States Petroleum Association v. Superior Court* (1995) 9 Cal.4th 559 (Western States), and is grounded in the separation of powers doctrine.

SOLUTION

This bill would create an exhaustion of administrative remedies procedure for water and sewer rates and assessments that, if public agencies elect to follow, would require the public to submit a timely written objection to the ratemaking proposal or new assessment and raise the particular Proposition 218 compliance issues the plaintiff may later litigate.

Public agencies that adopt exhaustion procedures would be required to provide their board and the public with written responses to each comment received before an agency acts on proposed rates or assessments. With a greater understanding of potential concerns and the agency's responses, the agency's board would have the opportunity to abandon its ratemaking/assessment proposal, change it (reduce it), or to better explain why it complies with Proposition 218's substantive limitations, before having to defend it in litigation.

If a public agency complies with the exhaustion procedures, the bill would specify documents that could be included in the administrative record, subject to certain exceptions, in the event of litigation.

AB 2257 builds on the strict procedural ratemaking requirements of Proposition 218 by creating a robust public process that facilitates dialogue, transparency, and the opportunity to resolve issues and avoid costly litigation. Codifying a procedure that requires issue exhaustion in Proposition 218 litigation would protect both legislative and adjudicative functions by allowing a

legislative body to hear the evidence, apply its reasoned discretion and expertise, and create an administrative record to facilitate judicial review. This would also foster better-informed administrative decisions, which benefit the objector, the public agency, and members of the public within the public agency's jurisdiction. This is especially valuable in ratemaking cases in which evidence and policies are highly technical.

Contact:

Laura Edwards, Legislative Fellow (916) 319-2011
Laura.Edwards@asm.ca.gov

Support:

Association of California Water Agencies (ACWA),
(Sponsor)

Updated February 8, 2024