



Public Law Update: Legislation Provides Optional Process for Updating Rates for Water and Sewer Services, and for any Assessments, to Limit Litigation

Local agencies preparing for their next update to rates for water or sewer services, or any assessment, will have an option to implement new rate-setting procedures that will limit litigated challenges. This is the result of legislation recently signed by the Governor, effective January 1, 2025. (Assembly Bill (“AB”) 2257; Chapter 561, Statutes of 2024; adding Government Code sections 53759.1 and 53759.2.).

If a local agency chooses to implement the optional procedures under AB 2257, the local agency will need to prepare written responses to any written objections submitted by a property owner subject to the proposed updated rates. By following these optional procedures, any litigated challenge to the updated rates will be limited. Only a person who submitted a timely written objection may file litigation, and the evidence to be considered during litigation will be limited to a record of proceeding for the rate-setting public hearing as defined by AB 2257.

Under existing law, local agencies must comply with the requirements of Prop 218^[1] when establishing updated (new, increased, or extended) property related fees (such as water and sewer rates) and assessments. Generally, for water and sewer rates, this includes preparing a cost of service study to confirm the rate does not exceed the proportionate cost of providing the service to the customer, mailing a 45-day prior notice to each record owner of a public hearing to consider the updated rate, and not approving the updated rates if written protests are submitted by owners of a majority of the properties receiving the service.

Under AB 2257, as a supplement to the Prop 218 requirements, prior to approving any updated rate for water or sewer services or any assessment, the local agency would: (1) post a separate notice on the local agency’s website, (2) supplement the mailed Prop 218 notice to identify the new process, (3) prepare written responses to any written objections, and (4) prior to approving the updated rates, the local agency’s governing body must make specified determinations. These four requirements are explained in more detail below.

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(1) The notice posted on the local agency's website must include the written basis for the updated rates and specify the deadline for property owners to submit written objections. The deadline may be no earlier than 45 days after the local agency mails the separate Prop 218 notice and publishes the draft cost of service study. Any written objection must (a) be submitted prior to the deadline specified in the notice, and (b) specify the grounds for alleging the updated rates do not comply with Prop 218.

(2) The supplement to the Prop 218 notice mailed to all property owners must include a link to the notice on the local agency's website, identify the requirements for submitting timely written objections, and provide notice that a failure to timely object in writing bars any right to challenge the updated rates through a legal proceeding.

(3) The local agency's written response to each timely written objection must: (a) be prepared prior to the close of the public hearing, (b) identify the grounds for which a challenge is not resulting in amendments to the proposed rates, and (c) include an explanation of the substantive basis for retaining or altering the proposed rates. It is important to note that a failure by the local agency to adequately respond to any timely written objection does not create an independent cause of action to challenge the updated rate; rather, if the rate is challenged in court, an inadequate written response from the local agency would be weighed by the court when considering the adequacy of all evidence in support of (or opposed to) the rate.

(4) The governing body of the local agency must, during the public hearing, consider each timely written objection and written response, and determine (exercising its legislative discretion) any of the following:

- a. Whether the written objections and the local agency's responses warrant clarifications to the proposed rates.
- b. Whether to reduce the proposed rates.
- c. Whether to further review (potential continuance) before making a determination on whether a clarification or reduction to the proposed rates is needed.
- d. Whether to proceed with the protest hearing or ballot tabulation hearing required under Prop 218.

This new optional procedure under AB 2257, summarized above, is in response to a California Supreme Court decision which concluded that a challenger to a property-related fee for wastewater services was not required to exhaust administrative remedies prior to filing a lawsuit since there was no "clearly defined machinery for the submission, evaluation, and resolution of complaints by aggrieved parties." (see

Plantier v. Ramona Municipal Water District (2019) 7 Cal.5th, 372, 384.) Through AB 2257, there is now an administrative remedy that must be exhausted by a challenger prior to filing suit, and it also provides the corresponding encouragement for the submission of comments as a part of the public hearing process at which local agencies will have an opportunity to address concerns prior to adopting updated rates.

Related Legislation for 2025: There are two other newly enacted bills effective in 2025 with a beneficial impact on local agencies' efforts to equitably establish and implement property-related fees. Namely: (1) Under SB 1072, any litigation that concludes a property-related fee was set in an amount in excess of what is authorized by Prop 218 would result in a corresponding credit in the next fee/rate update process, and not a refund to the challenger (Chapter 323, Statutes of 2024; adding Government Code section 53758.5); and (2) AB 1827 documents parameters for establishing tiered water rates, based on the incrementally higher cost of water service, which may be allocated among customer classes, within customer classes, or both, based on meter size or peaking factors (Chapter 359, Statutes of 2024; adding Government Code section 53750.6).

[1] Proposition 218 was approved by the voters in 1996, adding Articles XIII C and XIII D to the California Constitution. Article XIII D, Section 4, establishes requirements for updating any assessment (a charge upon real property for a special benefit). Article XIII D, Section 6, establishes requirements for updating any property-related service (a charge for a service provided to a property based on ownership or occupancy). "Prop 218 requirements" include compliance with the legislative requirements of the Proposition 218 Omnibus Implementation Act (Government Code Sections 53750, *et seq.*), as well as the body of judicial appellate law interpreting those requirements.

Attorneys at Burke regularly advise clients on legal matters related to rates for water, sewer and solid waste, and other property-related fees and assessments subject to Prop 218 requirements.

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