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SB-323 Local government: water or sewer service: legal actions. (2021-2022)

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Senate Bill No. 323

CHAPTER 216

An act to add Article 4.7 (commencing with Section 53759) to Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code, relating to local government.

[Approved by Governor September 22, 2021. Filed with Secretary of State September 22, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 323, Caballero. Local government: water or sewer service: legal actions.

The Mitigation Fee Act authorizes a local agency to establish, increase, or impose a variety of fees, dedications, reservations, or other exactions for services, and in connection with the approval of a development project, as defined. Existing law prohibits a local agency from imposing fees for specified purposes, including fees for water or sewer connections, as defined, that exceed the estimated reasonable cost of providing the service for which the fee is charged, unless voter approval is obtained. Existing law provides that a local agency levying a new water or sewer connection fee or increasing a fee must do so by ordinance or resolution.

Existing law requires, for specified fees, including water or sewer connection fees, any judicial action or proceeding to attack, review, set aside, void, or annul an ordinance, resolution, or motion adopting a new fee or service charge or modifying an existing fee or service charge to be commenced within 120 days of the effective date of the ordinance, resolution, or motion according to specified procedures for validation proceedings.

Except as provided, this bill would require any judicial action or proceeding to attack, review, set aside, void, validate, or annul an ordinance, resolution, or motion adopting, modifying, or amending water or sewer service fees or charges adopted after January 1, 2022, to be commenced within 120 days of the effective date or the date of final passage, adoption, or approval of the ordinance, resolution, or motion, whichever is later.

Articles XIII C and XIII D of the California Constitution generally require that assessments, fees, and charges be submitted to property owners for approval or rejection after the provision of written notice and the holding of a public hearing. Existing law, the Proposition 218 Omnibus Implementation Act, prescribes specific procedures and parameters for local jurisdictions to comply with Articles XIII C and XIII D of the California Constitution and defines terms for these purposes.

This bill would require a water or sewer agency mailing a written notice to the record owner of a parcel affected by a proposed fee or charge pursuant to Article XIII D to include a statement that there is a 120-day statute of limitations for challenging any new, increased, or extended fee or charge. This bill would provide that the provisions of this bill do not apply to a judicial action arising from billing errors, as provided, due to the defective implementation of an ordinance, resolution, or motion adopting, modifying, or amending a fee or charge for water or sewer service. Because this bill would require an agency issuing a notice pursuant to Article XIII D to include additional information in the notice, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Article 4.7 (commencing with Section 53759) is added to Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code, to read:

Article 4.7. Legal Actions Challenging Revenue Measures for Water or Sewer Service

53759. (a) Any judicial action or proceeding to attack, review, set aside, void, validate, or annul an ordinance, resolution, or motion adopting a fee or charge for water or sewer service, or modifying or amending an existing fee or charge for water or sewer service, shall be commenced within 120 days of the effective date or of the date of the final passage, adoption, or approval of the ordinance, resolution, or motion, whichever is later.

(b) Any action under this section by a local agency or interested person shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure, except that the time limits of subdivision (a) shall apply.

(c) This section does not apply to any fee or charge for water or sewer service for which another statute establishes a specific time and procedure for bringing a judicial action or proceeding to attack, review, set aside, void or annul a fee or charge of that type.

(d) A water or sewer agency required to mail a written notice pursuant to paragraph (1) of subdivision (a) of Section 6 of Article XIII D of the California Constitution shall include in the written notice a statement that there is a 120-day statute of limitations for challenging any new, increased, or extended fee or charge.

(e) This section does not apply to a judicial action arising from billing errors, including, but not limited to, overbilling, due to the defective implementation of an ordinance, resolution, or motion adopting, modifying, or amending a fee or charge for water or sewer service.

(f) This section shall only apply to a fee or charge for water or sewer service that has been adopted, modified, or amended after January 1, 2022.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.