A California Local Government Finance Update

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CaliforniaCityFinance.com
The California Local Government Finance Almanac

California Propositions November 2024

- **2** Public Education Facilities. *Bond Measure - Legislative*.
- **3** Marriage Equality. *Legislative Constitutional Amendment.*
- **4** Parks, Environment, Energy, and Water. *Bond Measure - Legislative.*
- **5** Local Government – 55% vote. *Legislative Constitutional Amendment.*
- **6** Remove Involuntary Servitude as Punishment for Crime. *Legislative Constitutional Amendment*.
- **32** $18 Minimum wage. *Initiative Statute*.
- **33** Prohibit State Limitations on Local Rent Control. *Initiative Statute.*
- **34** Require health care providers to spend 98% of revenues from federal discount prescription drug program on direct patient care. *Initiative Statute.*
- **35** Permanent tax on managed care orgs to fund Medi-Cal programs. *Initiative Statute.*
- **36** Drug and Theft Crime Penalties and Treatment-Mandated Felonies. *Initiative Statute.*

California Propositions November 2024

❑ 2 Public Education Facilities. *Bond Measure - Legislative*.

Issue $10 billion in bonds, $8.5 billion for k-12 facilities, $1.5 billion for community college facilities. State covers 50-55% of construction, 60-65% of modernization costs.

Historically, state/local bonds are how California has paid for school construction, improvements.

- Voters approved six state school bond measures between 1994 and 2020.
- Over the last 20 years, most school facility funding from voter-approved bonds ($31.8 billion).
- March 2020 Proposition 13 a $15 billion School bond failed with 47% yes.
- Recently, the Legislature allocated $4.6 billion in other funding for K-14 facilities. Almost all of this has been awarded.

Budget Impacts: $500m/yr over 35 years.

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California Propositions November 2024

❑ 4 Parks, Environment, Energy, and Water. *Bond Measure - Legislative.*

Issue $10 billion in bonds to fund environmental, energy, and water projects.

	$ Millions
Drought, flood, and water supply	**$3,800**
Increase quantity, quality of water supply	$1,900
Flood reduction measures	$1,100
River and lake restoration	$800
Forest health and wildfire prevention	**$1,500**
Sea-level rise and coastal areas	**$1,200**
Restore coastal areas	$890
Improve ocean habitats and marine wildlife	$310
Land conservation, habitat restoration	**$1,200**
Energy infrastructure	**$850**
Wind turbine development	$475
Transmission lines	$325
Battery development	$50

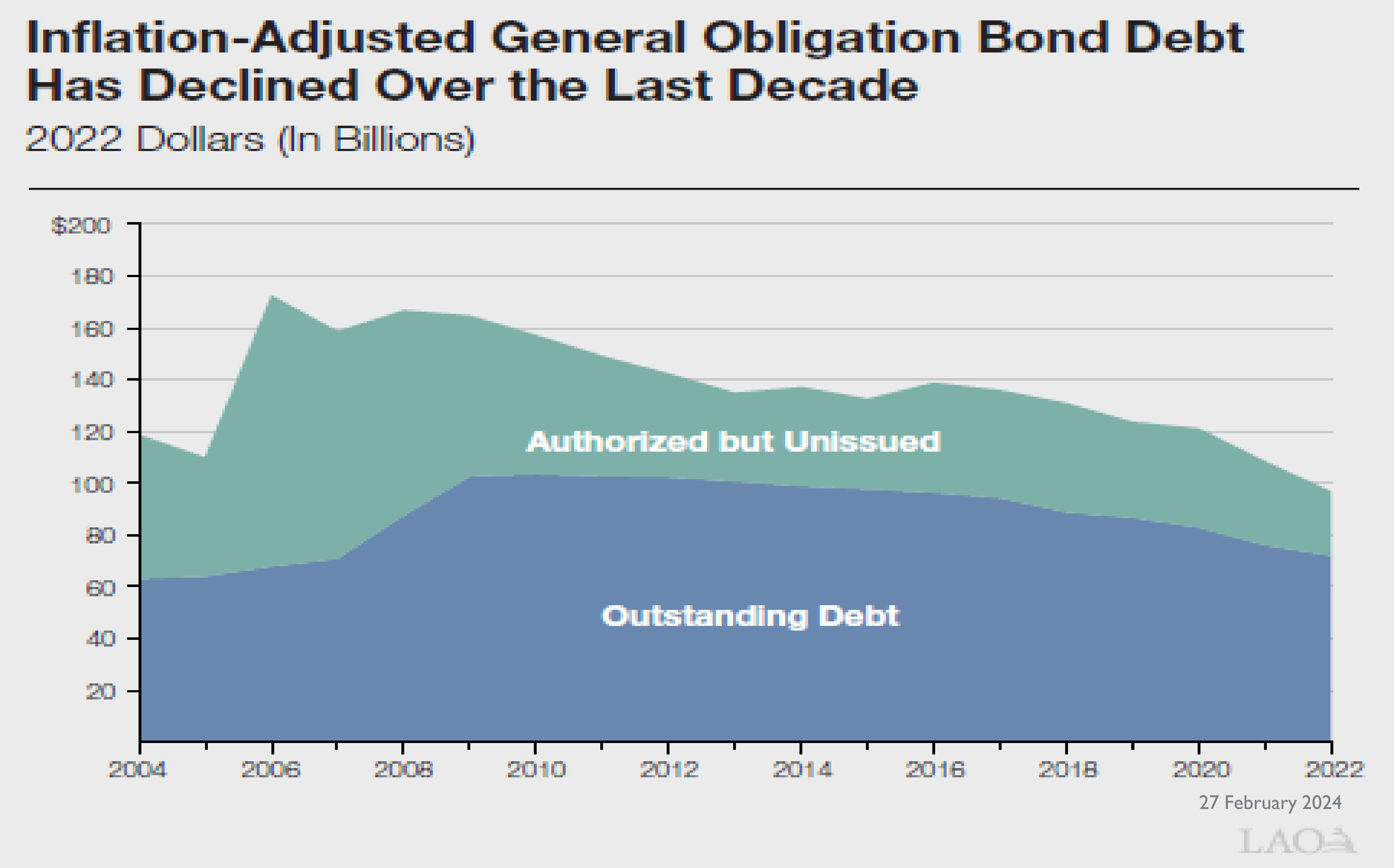
Parks	**$700**
Expand recreational activities	$300
Park construction and renovation	$200
State park repairs	$200
Extreme heat	**$450**
Extreme heat protection	$200
Heatwave and disaster shelters	$100
Local environmental projects	$150
Farms and agriculture	**$300**
Soil health, air pollution, water conservation	$105
Community gardens and farmer's markets	$60
Farmland and farmworker support	$135
Total	**$10 billion**

Between 1993 and 2022 there were six parks / water / wildlife bond measures.

- Voters approved four of the six: $9.7 Billion.

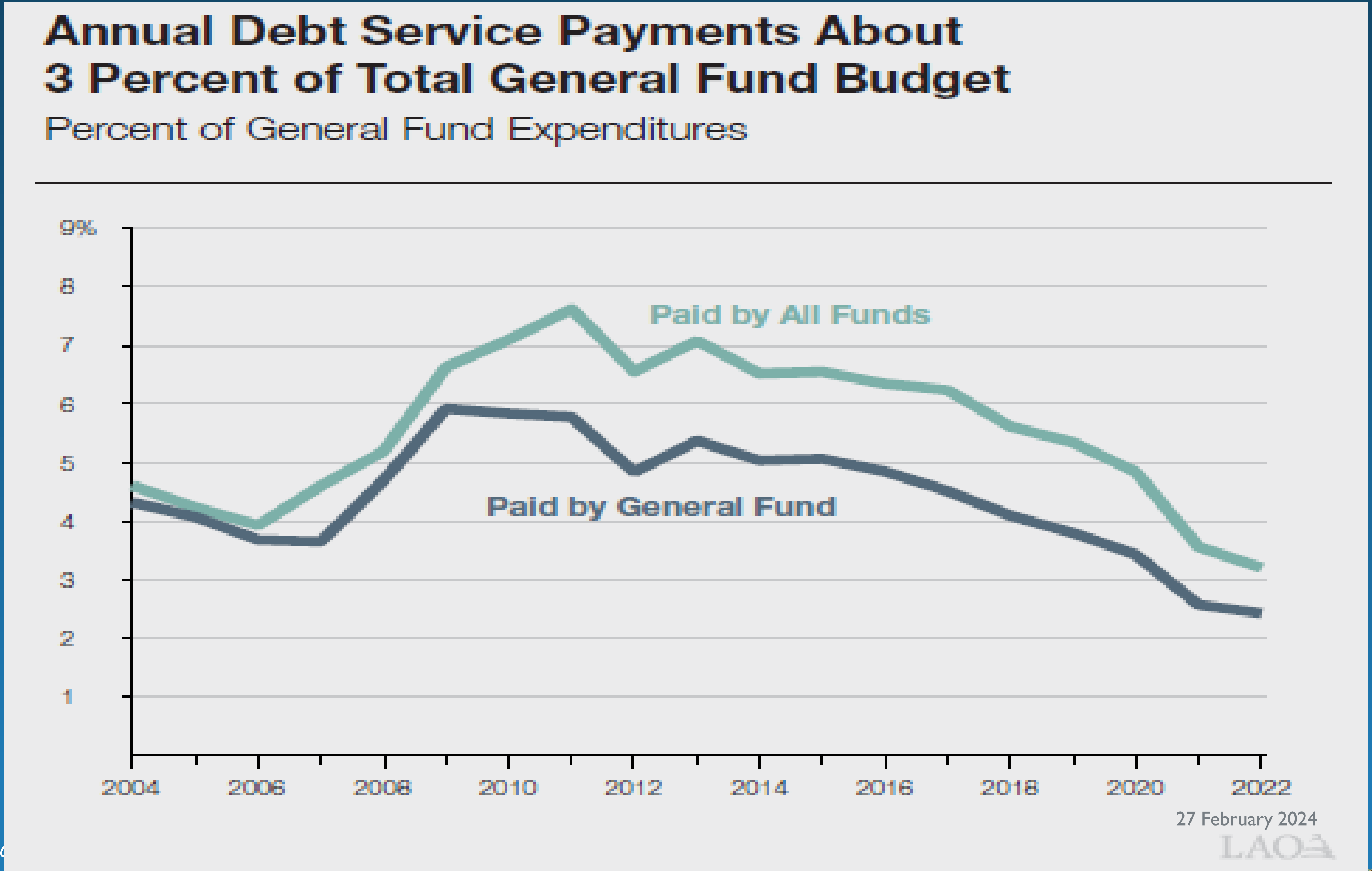
Budget Impacts: $400m/yr over 40 years.

California State Bond Debt Service



27 February 2024

California State Bond Debt Service



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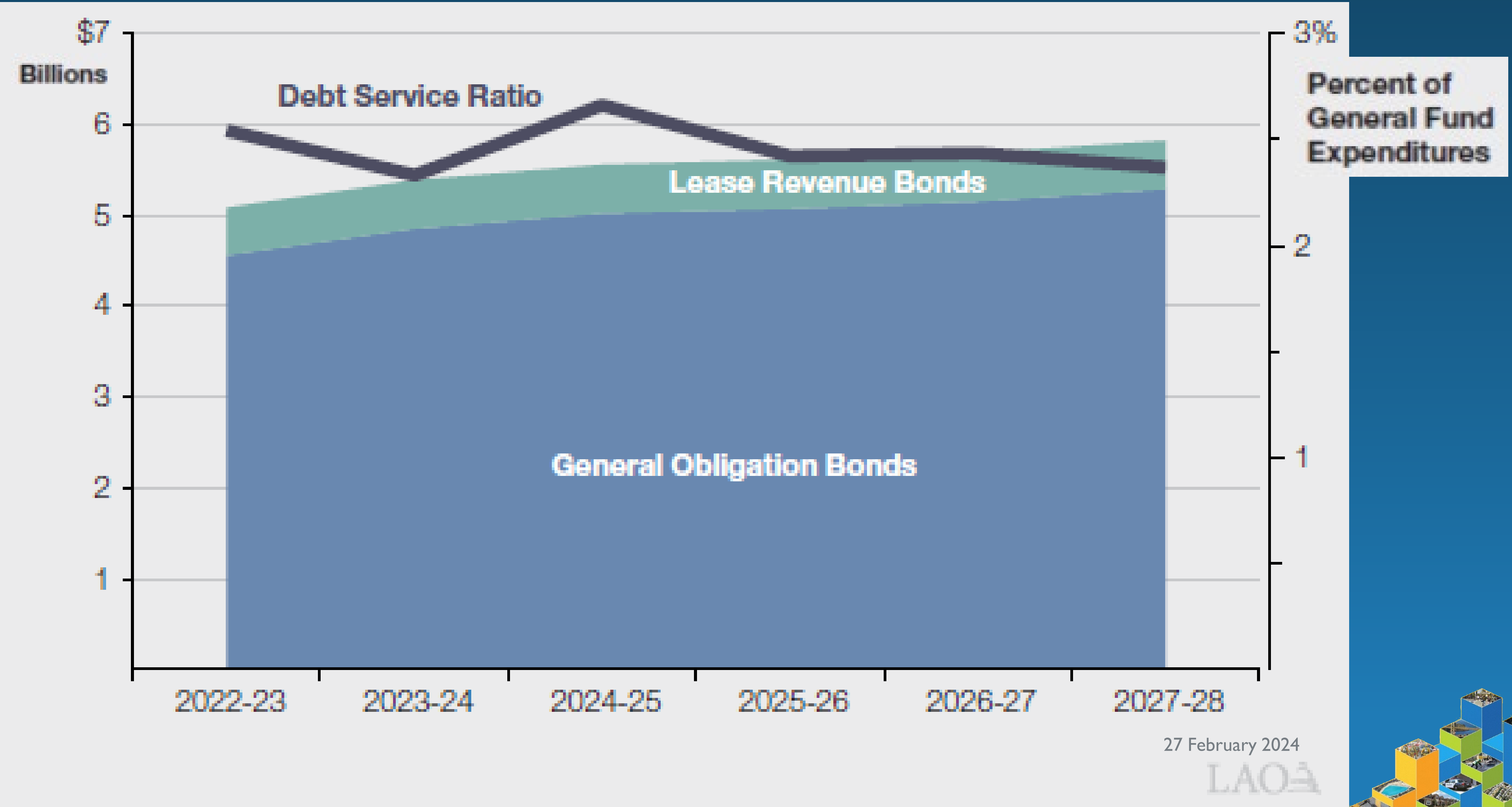

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California Propositions November 2024

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- **4** Parks, Environment, Energy, and Water. *Bond Measure - Legislative.*
- **5 Local Government – 55% vote.** *Legislative Constitutional Amendment.* Lowers voter approval level from two-thirds to 55% for a city, county, special district *ad valorem* tax to service bonded debt (general obligation bond) to fund construction, reconstruction, rehabilitation, or replacement of public infrastructure, affordable housing.
- **6** Remove Involuntary Servitude as Punishment for Crime. *Legislative Constitutional Amendment*.
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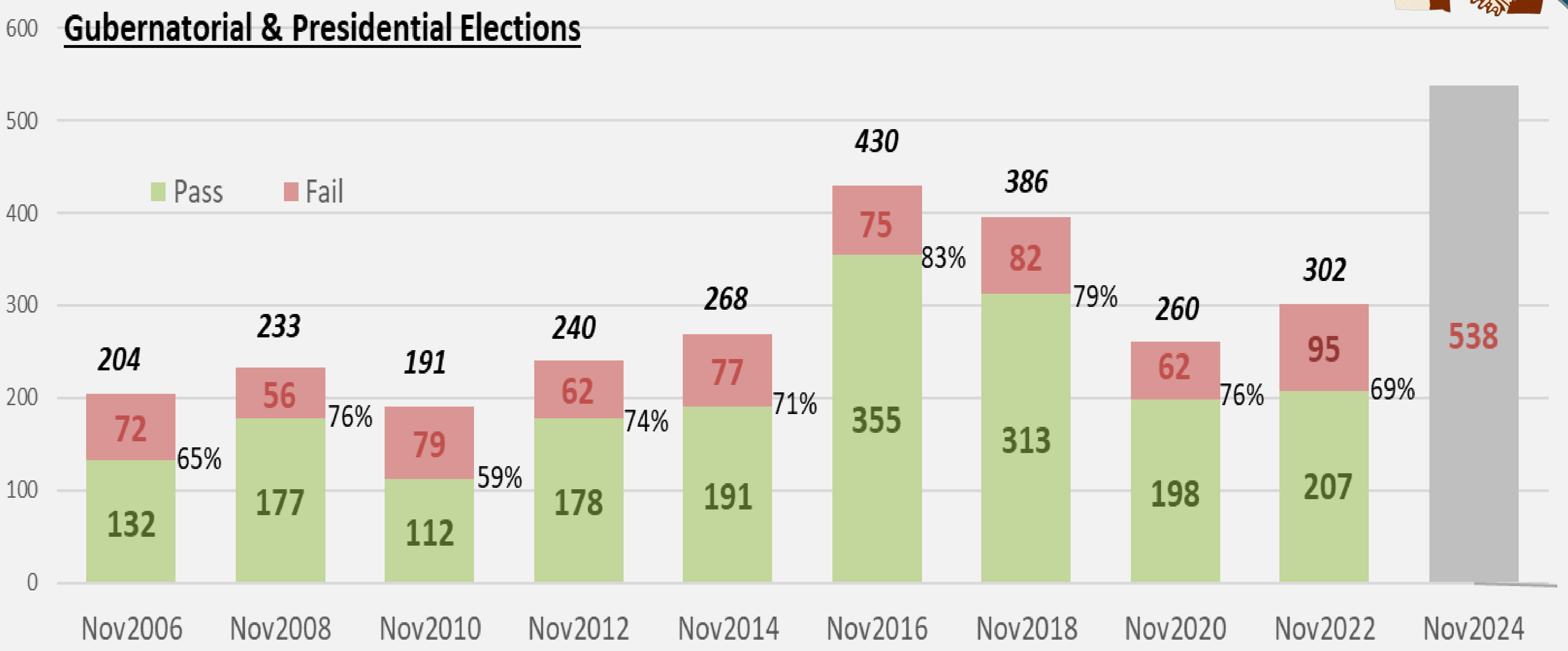
California Propositions November 2024

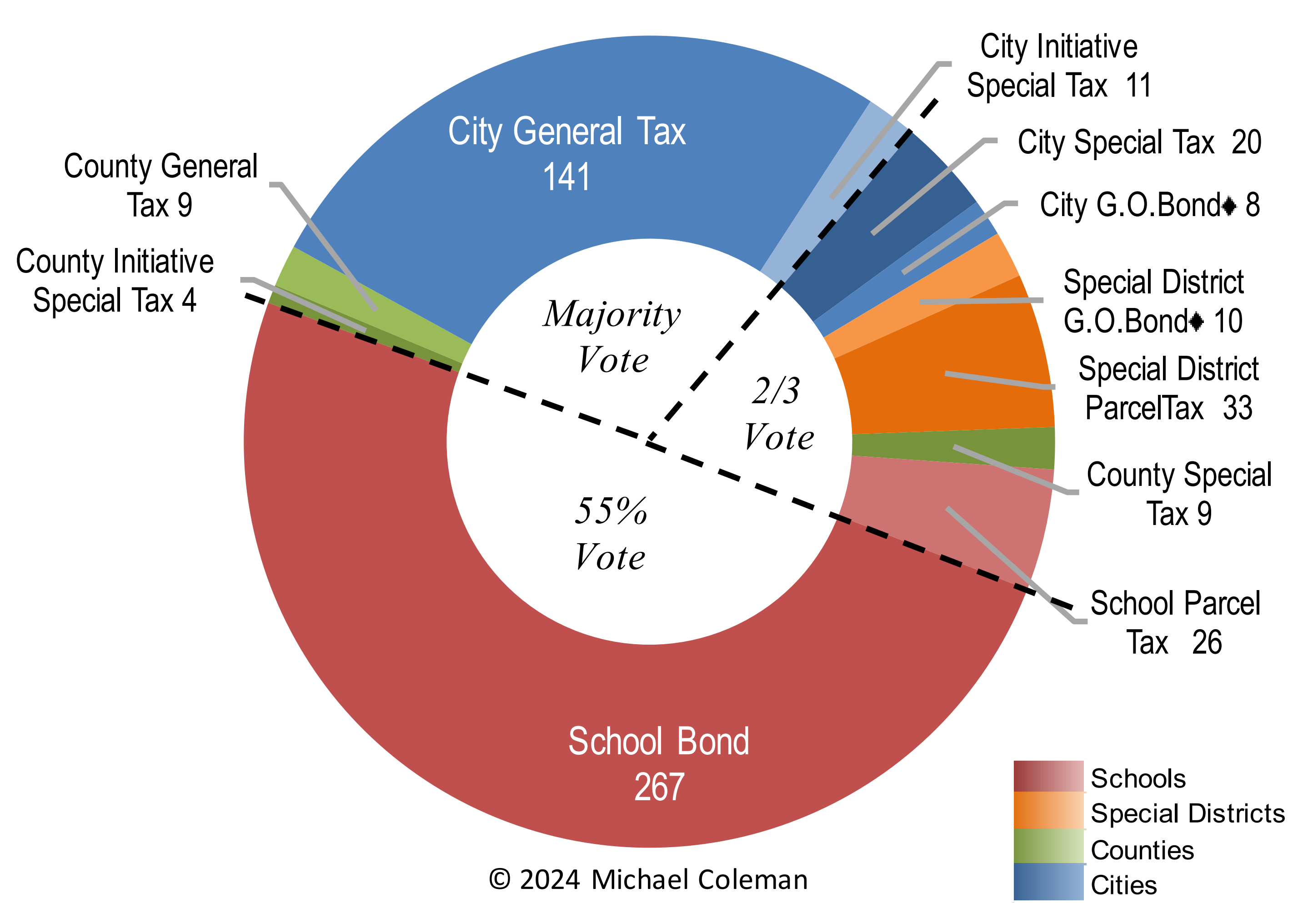
- ❑ **X…** Limits Ability of Voters and Gov'ts to Raise Revenues for Public Services.
  Initiative Constitutional.
  Requires statewide election and voter approval for state tax increases. For local citizen initiative special taxes, raises vote requirement from majority to two-thirds. Expands definition of "taxes" to include certain fees and charges.

- ❑ **X…** Constitutional Initiatives – Voting Thresholds (ACA13)
  Legislative Constitutional. Requires an initiated constitutional amendment proposing increased voter approval thresholds for state or local measures to be approved by the same voter threshold it is proposing. For example, an amendment proposing a two-thirds (66.67%) vote must also be approved by two-thirds of voters.

Local Tax & Bond Measures



Local Tax & Bond Measures November 2024 - Proposed

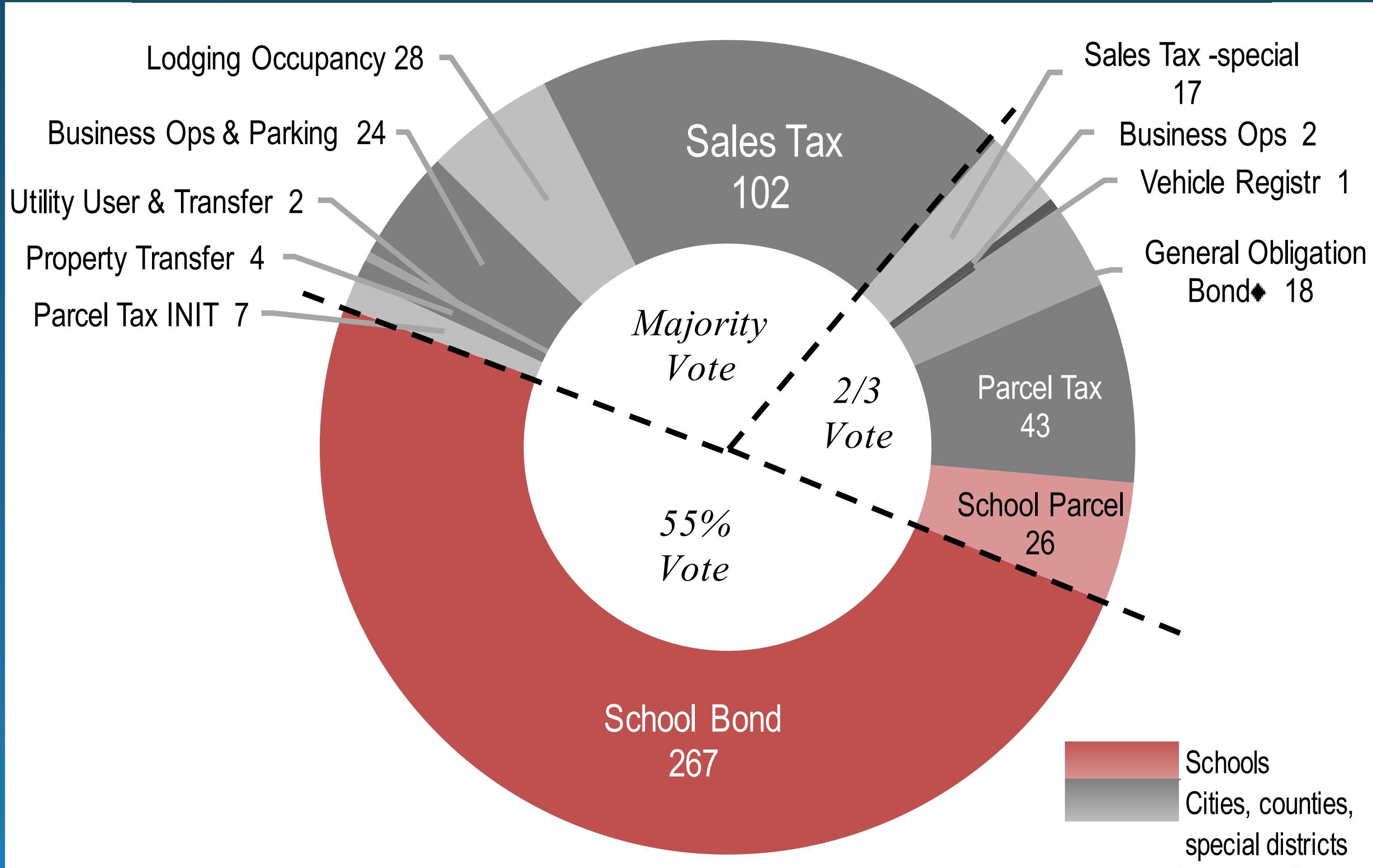


✓ 538 taxes & bonds

293 school, 180 city, 22 county, 43 special district

*includes 7 initiative special taxes – majority voter approval

Local Tax & Bond Measures November 2024 - Proposed



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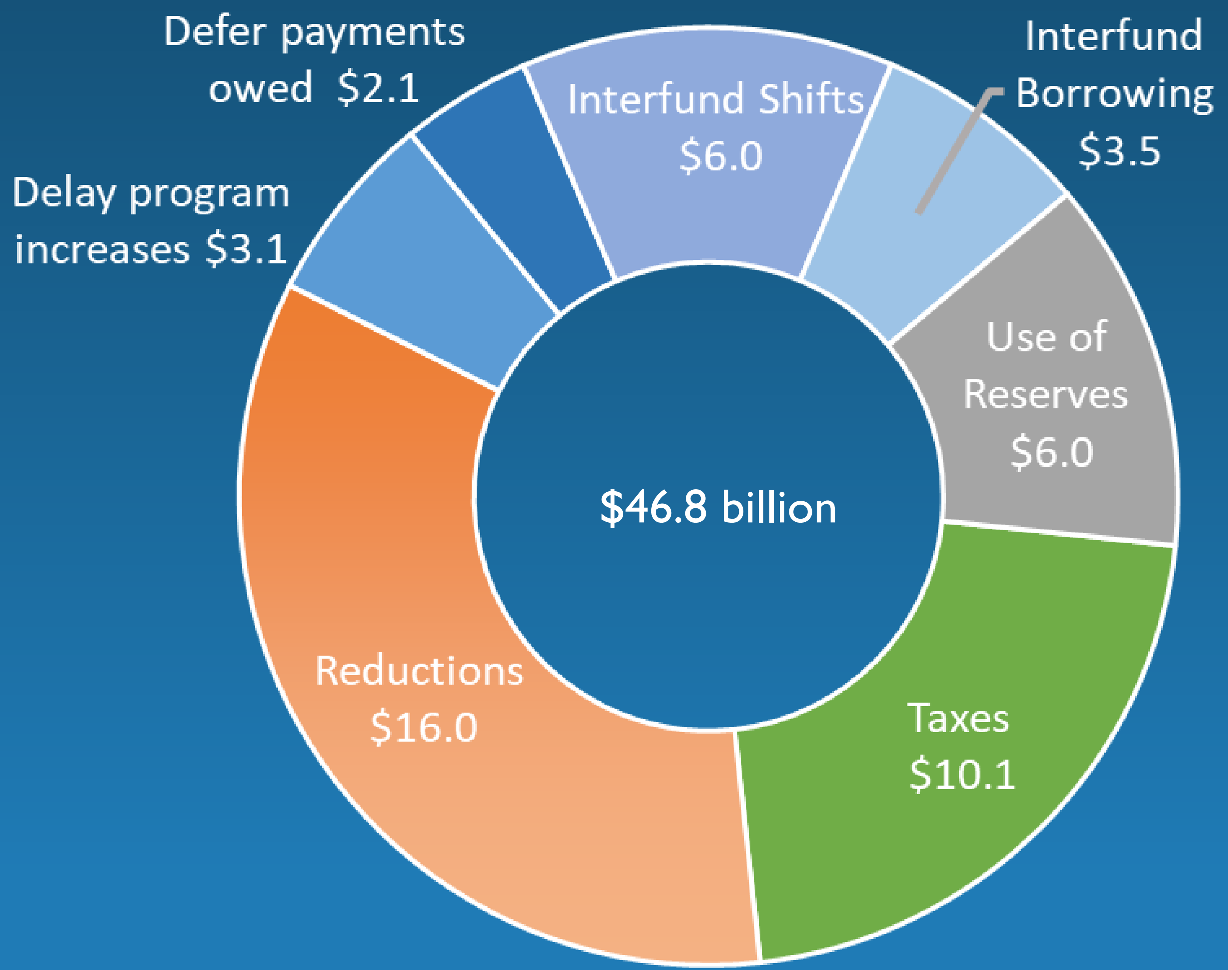
State Budget Solutions
Adopted State Budget 2024-25



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Update on the Law of Municipal Finance

by

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Cal Cities Annual Conference

October 17, 2024

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Business Roundtable Measure

Legislature of the State of California v. Weber (2024) 16 Cal.5th 237

- Removed onerous "Taxpayer Protection and Government Accountability Act" from 11/24 ballot as an unconstitutional revision because it undermined fundamental state and local power to manage public finances
- Proposed by the California Business Roundtable and mimicked a 2018 proposal traded for a ban on local soda taxes

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Business Roundtable Measure

- ACA 13 was to appear on the November ballot with the CBRT measure
- It would require an initiative amendment to the State Constitution which imposes a super-majority voting requirement to achieve that same super-majority
- Pushed to the 2026 ballot by AB 440 (Pellerin, D-Sta. Cruz)

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Business License Taxes

- *Cal. Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924
  - DCA concluded Prop. 218 does not require 2/3-voter approval of tax imposed by initiative, only of taxes proposed by government; Supreme Court affirmed
  - Dispute over scope of decision
    - Portions hold article XIII C, § 2 does not apply to voter-initiated taxes, and some argued this means all parts of § 2 do not apply Other parts suggest only parts of § 2 – specifically, that requiring an election on a general tax at a general election – does not apply
    - Court identified “loophole” that might allow governing body to adopt special taxes without 2/3 vote

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Upland & Special Taxes With Majority Voter Approval

City & County of San Francisco v. All Person Interested in the Matter of Proposition C (2020) 51 CA5th 703, *review denied*

- Business license tax increase to fund homeless programs got 60% approval
- City filed validation action; HJTA and business groups opposed
- DCA held initiative proposing special tax may pass w/ 50%+1 approval despite
  - Prop. 13
  - Prop. 218
  - City charter

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Still More on Upland

- *HJTA v. City & County of San Francisco* (2021) 60 Cal.App.5th 227
  - Followed the first SF case; another victory for the City
- *City of Fresno v. Fresno Building Healthy Communities* (2020) 58 Cal.App.5th 884
  - Followed the SF case, ruling for Fresno

Still More on *Upland*

- *City and County of San Francisco v. All Persons Interested in the Matter of Proposition G* (2021) 66 Cal.App.5th 1058
  - Followed earlier cases, this was a parcel tax
  - School district involvement in drafting measure not a problem
- *Jobs & Housing Coalition v. City of Oakland* (2021) 73 Cal.App.5th 505
  - Followed earlier cases
  - Fact that ballot materials said 2/3 required was not a problem

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More on *Upland*

- *County of Alameda v. Alameda County Taxpayers' Assn., Inc.* (2024) 99 Cal.App.5th 226
  - Followed other cases
  - Role of Children's hospital did not name private entity in violation of art. II, section 12

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More on Upland

Alameda County Taxpayers' Association, Inc. v. City of Oakland, 1st DCA No. A171041

- Trial court rejected challenge to majority voter approval of initiative special tax, also rejected claims CPI adjustment lacked rational basis and that the refence to the non-profit operator of the Zoo violated article I, section 12
- Appeal just getting started in 09/24

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More on *Upland*

- *Alliance San Diego v. City of San Diego* (2023) 94 Cal.App.5th 419
  - City tallied near-2/3 majority but did not declare measure passed or failed
  - Approved debt and directed issuance of tax after SF cases decided
  - Trial court ruled for challengers; DCA reversed on primary issue but remanded to try claim of excessive gov't involvement in initiative
  - Trial court ruled for City, further appeal expected

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Business License Taxes

Tesoro Refining & Marketing Co., LLC v. City of Carson, 2d DCA No. B335685

- City imposed special tax on petroleum refining
- Tesoro paid and then disputed apportionment of in-City and out-of-City gross receipts
- Trial court rejected suit for failure to exhaust appeal to City Manager
- Tesoro appealed
- Record being prepared as of 09/24

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Cannabis Taxes

SB 1059 (Bradford, D-Los Angeles)

- Would exclude state cannabis taxes and sales and use taxes from local gross receipts taxes on cannabis
- On the Governor’s desk as of 9/13/24

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Soda Taxes

Cultiva La Salud v. State of California (2023) 89 Cal.App.5th 868

- 2018's AB 1838 — legislative deal to preempt charter city soda taxes until 2031 in exchange for California Business Roundtable abandoning initiative to amend the CA Constitution to make nearly all government revenues subject to voter approval
- Penalty provision invalidated as improper interference with charter city home rule authority

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Utility Taxes / General Fund Transfers

- *Wyatt v. City of Sacramento* (2021) 60 Cal.App.3d 373
  - Post-218 approval of GFT from water, sewer, and trash utilities to general fund as a general tax was lawful
  - Plaintiffs had argued that Prop. 218 forbids all general UUTs
  - Victory means UUTs are safe and GFTs can be approved by voters

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Utility Taxes / General Fund Transfers

- *Lejins v. Long Beach* (2021) 72 Cal.App.5th 303
  - Similar facts as *Wyatt v. Sacramento* – post-218 election to validate GFT from water and sewer utilities
  - Purported to distinguish *Wyatt* in ruling for challengers, but really disagrees with *Wyatt*

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Utility Taxes / General Fund Transfers

- *Palmer v. City of Anaheim* (2023) 90 Cal.App.5th 718
  - Similar facts as *Wyatt v. Sacramento* – post-26 election to validate GFT from power utility
  - Upheld because election was sufficient to satisfy Prop. 26 and Prop. 218 did not apply

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Utility Users Taxes

Beck v. City of Canyon Lake, 4th DCA Case No. D083322

- Trial court invalidated voter-approved UUT on water and sewer as use of proceeds of a property related fee for unrelated purposes
- Would endanger all water, sewer and trash UUTs
- Appeal fully briefed as of May 15, 2024

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Utility Users Taxes

Rosenthal v. City of Los Angeles, 2d DCA No. B339303

- Class action challenge to UUT on electric bills
- City won on demurrer
- Not clear if plaintiffs will pursue their appeal filed 5/24/24
- Default on failing fee as of 9/17/24
- Similar case pending in trial court – *Sierra v. City of Los Angeles*, LASC No. C24-08738

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State Water Project Taxes

- State Water Contractors have pre-Prop. 13 authority to impose a property tax to fund their obligations to the DWR under the SWP contracts
- *Goodman v. County of Riverside* (1983) 140 Cal.App.3d 900 held such taxes survived Prop. 13 because the State Water Project and its associated contract, debts and taxes were pre-Prop. 13 debt
- *Goodman* rule reaffirmed in *Coachella Valley Water Dist. v. Superior Court* (2021) 61 Cal.App.5^{th} 755
- May be important to pending discussions of a Delta conveyance / “the big Fix”

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State Water Project Taxes

- *Coachella Valley Water District v. Superior Court* (2021) 61 Cal.App.5th 755
  - Challenge to tax must be brought in validation with very short statute of limitations
  - Case continues as to subsequent tax years

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ACA 1 – Bonds with 55% Approval

- ACA 1 will appear on the November ballot as Proposition 6
- Would lower the voter-approval requirement for supplemental property taxes to support bonds to fund affordable housing and infrastructure from 2/3 to 55%
- Realtors went neutral after AB 2813 (signed 7/18/24)
  - Removed TUT authority
  - Removed authority to acquire residential property of 4 or fewer units

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ACA 1 – Bonds with 55% Approval

Bonta v. Superior Court (Coupal) (2025) 104 Cal.App.5th 147

- HJTA challenged the ballot label for failing to note that 2/3 is presently required for supplemental property taxes to support bond
- Trial court ruled for HJTA; Third District reversed because the 2/3 rule was noted in the title and summary

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Property Taxes

Greenspan v. County of Los Angeles (2023) 98 Cal.App.5th 135

- LA County incorrectly reassessed property after new construction because it did not reduce the value for structures that were removed

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Property Tax

Equinix LLC v. County of Los Angeles (2024) 101 Cal.App.5th 1108

- Property owner and lessor sued to challenge denial of property tax refund claim
- Because lease term was less than 35 years, lease was a “change of ownership” triggering reassessment

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Property Tax

Prang v. Amen (2024) 15 Cal.5th 1152

- Sale of nonvoting stock was change of ownership triggering reassessment

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LAFCO Property Tax Allocation

AB 3277 (Assembly Local Gov. Committee)

- Cortese-Knox-Hertzberg requires LAFCO to determine the amount of property taxes to be apportioned to a newly incorporated city or newly formed district
- This will would clarify LAFCO need not to so for the formation of a special if the district does not seek a share of the 1% property tax
- Signed and effective 1/1/25; Gov Code § 56810

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Bond Elections

SB 798 (Glazer, D-Contra Costa)

- Effective 1/1/24, requires ballot pamphlet on bonds to be paid by supplemental property taxes to disclose tax in terms of dollars per $100k of assessed valuation, rather than per $100 of av

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Parcel Taxes

San Bernardino County Fire Protection District v. Page (2024) 99 Cal.App.5th 791

- invalidated tax repeal measure post-election due to proponents' false statements of law as to compliance of parcel tax with Proposition 218

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Parcel Taxes

Loeber v. Lakeside Joint School District (2024) 103 Cal.App.5th 552, review denied

- initiative sought to require senior exemption from parcel tax
- trial court dismissed for lack of standing, 6th DCA found standing but concluded no statute authorizes a school district initiative and article 13C, section 3 did not require the initiative to apply here because this measure did not affect tax rates

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PACE Charges for Energy Conservation Upgrades

Morgan v. Ygrene Energy Fund, Inc. (2022) 84 Cal.App.5th 1002 (review granted S277628)

- Property Assessed Clean Energy (PACE) lends ratepayers funds to install energy conservation equipment and collects debt on property tax roll
- Property owner required to exhaust property tax administrative remedies via County to seek refund of charges
- SCOCA review fully briefed as of 9/15/23

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Sales and Use Taxes

Bekkerman v. CDTFA (2024) 99 Cal.App.5th 1264

- upholding CDTFA regulation taxing bundled cell phone and service contracts at unbundled price of cell phone
- such regulations upheld unless arbitrary, capricious or entirely lacking evidentiary support

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Sales and Use Taxes

- AB 1256 (Wood, D-Healdsburg) – lifts 2% cap on sales taxes for Humboldt County
- SB 335 (Cortese, D-Santa Clara) – ditto for Sta Clara County
- SB 862 (Laird, D-Santa Cruz) – ditto for Sta Cruz County transit

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Sales and Use Taxes

AB 2854 (Irwin, D-Ventura)

- Requires annual reports of sales tax rebate agreements to CDTFA and website posting
- Authorizes fine for failing to do so of $1,000 per day for first 180 days and $4,000 per day for the balance of the first year
- On the Governor’s desk as of 9/13/24

Groundwater Extraction Charges

Ventura v. UWCD (2017) 3 Cal.5th 1191

- Groundwater charges subject to Prop. 26, not 218
- Remanded to decide if:
  - 3:1 ratio of ag. to non-ag. rates mandated by Water Code §75594 violates Prop. 26
  - Adequate justification for rates on UWCD's record
- DCA remanded to UWCD for a new hearing
- City prevailed again; UWCD appealed again

Groundwater Extraction Charges

City of San Buenaventura v. United Water Conservation Dist. (2022) 79 Cal.App.5th 110, *review denied*

- Affirmed City's victory on remand
- Statute requiring 3:1 ratio of M&I to ag fees unconstitutional
- District could not justify 3:1 ratio on any of its many records
- Standard of review under Prop. 26 is independent judgment
  - No deference to ratemaker
  - Follows 218 standard of *Silicon Valley*
- Prop. 26 requirement of "fair or reasonable relationship" between fee and a payor's burdens on and benefits from service allows ratemaker "flexibility"

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SGMA Suits

Mojave Pistachios, LLC v. Superior Court (2024) 99 Cal.App.5th 605

- Challenged GSP, sustainable yield report, and extraction fee
- Alleged writs, validation, takings, constitutional claims, and CEQA violations
- Trial court sustained demurrer for failure to pay first, litigate later.
- DCA granted writ review and published an opinion affirming

Groundwater Extraction Charges

- *Pajaro Valley Water Mgmt. Agency v. AmRhein* (2007) 150 CA4th 1364
  - Groundwater augmentation / extraction charges are property related fees subject to Prop. 218
  - No longer good law due to *Ventura v. United Water* on one point – that groundwater charges subject to 218, now it is 26

Groundwater Extraction Charges

- *Griffith v. Pajaro Water Mgmt. Agency* (2013) 220 CA4th 586
  - Charge is a fee for "water service" exempt from 13D, 6(c) election requirement
  - Omnibus Act's definitions are good authority notwithstanding *HJTA v. Salinas*
  - Notice of protest hearing can be given to property owners alone

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Groundwater Extraction Charges

- *Griffith* (continued)
  - Debt service, GA&O, service planning all permissible uses of fee
  - AWWA M-1 Manual's cost-accounting process complies w/ Prop. 218
  - Parcel-by-parcel cost analysis is not required; class-by-class is okay if classes rationally drawn

Groundwater Extraction Charges

- *Great Oaks Water Co. v. Santa Clara Valley Water District*, 6th DCA No. H050939
- Consolidates 15 cases challenging, or seeking to enforce, SCVWD's pump tax
- Plaintiffs' appeal set for argument 10/3/24 taken off calendar pending submittal of corrected administrative record

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Prop. 218 & Water Rates

- Challenges to tiered water rates after *Capistrano*:
  - *Patz v. City of San Diego*, 4th DCA Case No. D080308 – trial court invalidated tiered rates, City's appeal fully briefed and awaiting argument as of 8/28/23
  - *Dreher v. LA DWP*, 2d DCA No. B329610 — City won all but low-income discount; no refunds because plaintiff did not pay under protest; plaintiffs appealed
    - Reply brief due 10/21/24

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Prop. 218 & Water Rates

- Still more suits:
  - *Campana v. EBMUD* (2023) 91 Cal.App.5th 1075
    - Suit time-barred
    - SOL starts when fees adopted, not when effective or collected
    - But GC 53759's new 120-day SOL runs from effectiveness
  - *Chinitz v. City of Sta. Cruz*, SCSC no. 19 CV 03364 (tiered rates) City prevailed, no appeal

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Prop. 218 & Water Rates

- *Coziahr v. Otay Water District* (2024) 103 Cal.App.5th 785
  - Trial court invalidated tiered rates under *Capistrano* and awarded refunds
  - Both parties appealed
  - DCA affirmed the trial court using deferential review and concluded that money refunds are available under Prop. 218
  - Otay's petition for review and two requests for depublication pending as of 9/13/24

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Water Rates

Plata v. City of San Jose (2022) 74 Cal.App.5th 736, review denied

- *Post-Capistrano* challenge to tiered water rates
- Late payments not subject to Prop. 218 analysis (and get lenient review under Prop. 26)
- Trial court abused its discretion to allow plaintiffs to1 raise at trial an issue not in Government Claims Act claim or in complaint

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Water Rates

2023’s AB 755 (Papan, D-San Mateo)

- Requires water cost-of-service analysis to isolate costs to serve top 10% of each customer class
- May make it risky not to have tiered rates
- But tiered rates are challenging, too
- Adopts Water Code section 390 et seq. effective 1/1/24

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Water Rates

- AB 1827 (Papan, D-Millbrae)
- Facilitates tiered rates by allowing use of meter size, peaking factors, and similar criteria in water ratemaking
- On the Governor's desk as of 9/13/24
- Response to trial court rulings against the City of San Diego and the Otay Water District, both now pending on appeal

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Water Rates

- SB 3 (Dodd, D-Napa)
- Extends regulations of water shutoffs to systems serving between 15 and 200 customers. Previously law only applied to larger systems.
- Effective 1/1/24

Prop. 218 & Water Rates

City of Palmdale v. Palmdale Water District (2011) 198 CA 4th 926

- City challenged conservation water rates, claiming Prop. 218 disallows them
- DCA found 218 and Constitutional provision against wasting water (art. X, § 2) could be harmonized, but struck down PWD rates as insufficiently justified
- Conservation rates must be set carefully

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Prop. 218 & Water Rates

Capistrano Taxpayers Assn v. City of San Juan Capistrano (2015) 235 CA4th 1493

- Must satisfy water conservation mandate of article X, § 2 and Prop. 218, both
- Domestic rates can fund recycled water as supply program
- Tiered rates require precise cost-justification
- Disagrees with other cases and therefore trial courts need not follow it
- SCOCA read narrowly to invalidate rates b/c city offered no cost justification

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Prop. 218 & Water Rates

Morgan v. Imperial Irr. Dist. (2014) 223 CA4th 892

- No separate protest vote on water rates on domestic, municipal, industrial and agricultural water customers
- Full cost recovery
- Data need not be perfect

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Prop. 218 & Water Rates

Green Valley Landowners Assn v. City of Vallejo (2016)
241 CA4th 425

- Restates “pay first, litigate later” rule
- Urban water rates need not subsidize higher cost of service to exurban system

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Prop. 218 & Water Rates

- Challenges to tiered water rates following *San Juan Capistrano* in:
  - *Marin Municipal Water District* – DCA found no duty to exhaust, SCOCA denied review, MWD lost liability phase; settled after briefing remedy
  - *City of Glendale* – unpublished victory, publication & review denied, settled
  - *Goleta Water District* – unpublished victory, request to publish denied
  - *Heath v. Western MWD*, Riverside No. RIC1806590
    - Upheld WMD's tiered rates 10/17/19, no appeal

Prop. 218 & Water Rates

- Unpublished case on tiered rates in
  - *Boyd v. Soquel Creek Water Dist.*, 2016 WL 1752932
    - District's trial court win against pro per reversed on appeal and remanded for trial on 6(b)(3)[rates proportional to cost] but affirmed on 6(b)(4) [immediately available water service]
  - *Delano Guardians Comm. v. City of Delano,* 2018 WL 5730155
    - City victory in trial court affirmed on various grounds; tiered rates challenge rejected on appeal because not raised at trial

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Water Rates

- *KCSFV I v. Florin County Water Dist*. (2021) 64 Cal.App.5th 1015
  - Invalidated water rates for inadequate notice of rates and insufficient cost justification
  - Very good discussion of procedural defenses for Prop. 218 cases
  - Bad decision for Florin CWD, but good news for the rest of us
  - Lesson learned – hire a ratemaking consultant to cost-justify your rates unless you have the resources to do it in-house. You cannot just convert your budget into an across-the-board rate increase.

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Water Rates

City of Pico Rivera v. Pico Water District, Los Angeles County Superior Court Case No. 24NWCP00165

- Reverse validation challenge to water rates
- Case in its earliest stages as of 09/24

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Sewer Fees

Plantier v. Ramona MWD (2019) 7 Cal.5th 372

- Prop. 218 challenge to sewer fees defeated in trial court for failure to exhaust administrative remedies by participating in the Prop. 218 protest hearing
- S Ct. reversed, concluding the Prop. 218 protest proceeding was not fit to resolve complaint about EDU assignment
- Left open whether plaintiffs must participate in protest hearing to challenge fee increases
- Advisable to establish a local remedy that **does** apply to as-applied and facial challenges and to state in notice of 218 hearing that all challenges will be heard

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Sewer Fees

- *Plantier v. Ramona Municipal Water Dist*. 4th DCA Case No. D079529 [2022 WL 13764787] (unpublished)
  - Affirmed trial court ruling to decertify class as riven with internal conflicts
  - Ramona and CASA unsuccessfully sought publication
  - SCOCA denied review

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Sewer Fees

Allred v. City of San Diego, SDSC No. 37-2021-0030939

- Class action challenge to sewer rates
- Class certified 6/10/24
- Trial set for 6/6/25

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Exhaustion of Administrative Remedies

- AB 2257 (Wilson, D- Suisun City)
  - Allows water and sewer providers to impose a duty to exhaust administrative remedies before suit
  - Once adopted, local policy would require challengers to participate in ratemaking hearings, identify their legal issues, and sue only on those issues
  - On the Governor's desk as of 9/13/24

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Exhaustion of Administrative Remedies

Stettner v. Mercedes-Benz Financial Services USA, LLC, (2023) 98 Cal.App.5th 45

- Customers challenged use tax on car lease termination fees
- DCA ruled customers were required to exhaust administrative remedies with CDTFA before suit

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Sewer Fees

SB 231 (Hertzberg, D-San Fernando Valley)

- Effective 1/1/18, defines "sewer" under Prop. 218 to include storm sewers (GC 53750(k))
- Seeks to overrule *HJTA v. Salinas* by statute, citing *Crawley v. Alameda* and *Griffith v. Pajaro*
- This authority is most safely used for stormwater reuse project benefitting water supplies
- Test litigation has not come
- Cited favorably in *Paradise Irr. Dist. v. Comm'n on State Mandates*
- Construed negatively, but not reached in *DOF v. Mandates Commission* (3rd DCA 2022)

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Sewer Fees

Gluck v. CCSF, 1st DCA Case No. A170087

- Prop. 218 challenge to stormwater fees included in sewer rates
- Trial court granted judgment for the City, citing SB 231, rather than following *Salinas* or *Department of Finance v. Commission on State Mandates*
- Plaintiffs appealed; appeal now being briefed
- San Francisco has a combined sanitary and storm sewer, which affects analysis

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Sewer Fees

Raja Development Co., Inc. v. Napa Sanitary Dist. (2022) 86 Cal.App.5th 85

- Challenge to use portion of combined use and connection fee for sewer services not subject to validation under Gov Code 66022

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Sewer Fees

Moore v. City of Lemon Grove (2015) 237 CA4th 363

- Prop. 218 allows full cost recovery
- Approved informal allocation of public works department costs to sewer utility

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Utility Connection Fees

- SB 1210 (Skinner, D-Berkeley)
- Originally a cap on utility connection fees at 1% of building permit value
- Now a mandate that fees be posted to an agency's website along with estimated time it takes to complete a new connection for residential development
- Exemption for special districts without websites
- Adopted as Public Utilities Code section 8400

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Utility Connection & Capacity Charges

- 2022's AB 2536 (Grayson, D-Contra Costa)
  - Requires special districts to provide nexus studies for capacity and connection charges
  - Requires all local agencies to make the study available 14 days before rates are adopted
  - Adopted Gov. Code 66016.5 effective 1/1/23

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Stormwater Fees

- *Dessin, LLC v. City of Sacramento*, 3rd DCA Case No. C100644
  - Reverse validation challenge to increase in storm water fee because margin of victory in property owner vote provided by city's own properties and those of other government agencies
  - Trial court ruled for City
  - Opening brief due 9/9/4, not filed as of 9/13/24

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Stormwater Fees

Dept. of Finance v. Commission on State Mandates (2022) 85 Cal.App.5th 535, review denied

- Street-sweeping mandate not reimbursable b/c local governments can impose fees for trash removal
- But partial exemption from Prop. 218 for "sewer" fees limited to sanitary sewer fees
- Did not reach impact of 2017-18's SB 231, which took the opposite view, b/c statute not retroactive to this case
- Agencies now processing mandate claims with support from D-Max

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Franchise Fees

Jacks v. City of Santa Barbara (2017) 3 Cal.5th 248

- SCE agreed to increased franchise fee upon PUC authorization for line item on power bills
- DCA found tax requiring voter approval
- Supreme Court remanded: Franchise fees must reflect reasonable value of franchise
  - Reasonable value may be shown by bona fide negotiations, "other indicia of worth"
  - Also reaffirms that valid fees do not become taxes simply because passed on to rate payers
- City won remand trial
- City won further appeal in an unpublished ruling; plaintiffs did not seek review

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Franchise Fees

City of Lancaster v. Netflix, Inc. (2024) 99 Cal.App.5th 1093

- City could not sue streaming service to collect DIVCA franchise fees
- CPUC retains authority to require such fees

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Trash Franchise Fees

Zolly v. City of Oakland (2022) 13 Cal.5th 780

•Challenge to franchise fee imposed on City solid waste franchisees under Props. 218 and *Jacks v. City of Santa Barbara*

•SCOCA ruled apartment owners had standing because they bore economic incidence of fee; city's claim otherwise could not be tested on demurrer

•Prop. 26 exception for use of property limited to tangible property, not franchise itself

•Fee was "imposed" so as to trigger Prop. 26 b/c established by legal authority

•Oakland can try to prove at trial that haulers get unusual rights in rights-of-way that are proportionate in value to franchise fee

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Trash Franchise Fees

- Tips for protecting this revenue source
  - Avoid controversy if possible
  - Make a record that haulers get rights in rights-of-way that others do not (like the right to place bins in street weekly)
  - Make a record that the value of those rights is at least roughly proportionate to the franchise fee
  - Have a cost-of-service study in your record; consider hiring a consultant, and have a lawyer review it
  - Separately cost regulatory fees (like AB 939 compliance fees)

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Franchise Fees

Apartment Owners Association of California v. City of Los Angeles (2d DCA Case No. B313439)

- Class action challenge by well-known plaintiffs' lawyers to franchise fees on commercial and multi-family haulers under Prop. 218
- City won summary judgment; plaintiffs appealed
- DCA reversed and remanded, citing *Zolly*
- LASC Case Nos. BC677423
  - Summary judgment denied 03/24, class certification denied 8/23/2024, may be headed for appeal

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Franchise Fees

Mahon v. City of San Diego (2020) 57 Cal.App.5th 681

- San Diego obliges SDG&E to spend 4.5% of gross receipts on utility undergrounding and the PUC allows SDG&E to recover 3.53% from customers as a line item on bills
- Plaintiffs alleged this is a non-voter approved tax under Prop. 218
- Trial court ruled for city, citing *Jacks* and concluding this was a proper regulatory fee.
- Court of Appeal affirmed only under *Jacks*, concluding: (i) there were good faith negotiations and (ii) there was substantial evidence the fee was reasonably related to value of the franchise

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Solid Waste Fees

Padilla v. City of San Jose (2022) 78 Cal.App.5th 1073, review denied

- Class action challenge to collection of delinquent trash fees on tax roll
- Court affirmed trial court conclusion that plaintiffs could not pursue case because they had not paid the fees under protest under HSC 5470 et seq. or to pay first and litigate later
- Powerful defense for water, sewer and trash rates

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Solid Waste Fees

- *Chiquita Canyon, LLC v. County of Los Angeles*, LA Superior Case No. BS171262
  - Challenge to landfill tipping fees imposed via CUP on landfill operator under Mitigation Fee Act
  - Trial court found some fees lacked nexus
    - Park development
    - Natural habitat
    - Disaster debris cleanup
  - Others lacked proportionality
    - AB 939 fee of 25¢ per ton
    - Road impacts of 50¢ per ton
    - $200k to $3m for alternative technology research
  - Settled

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Other Fees for Use of Public Property

Turo, Inc. v. Superior Court (City and County of San Francisco) (2022) 80 Cal.App.5th 517

- Granted writ to reverse summary judgment for City to enforce airport access fee on car rental app
- DCA concluded app was a software provider, not a car rental company
- Another example of the difficulty of applying existing laws to e-commerce

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Electric Rates

Boyd v. Central Coast Community Energy (2023) 96 Cal.App.5th 136, review denied

- Power rates on those who opt into community choice aggregator are "imposed" so as to trigger Prop. 26
- "impose" requires only government action to establish rates, compulsion not required
- The respondent's rates were adequately cost-justified
- Problematic expansion of Prop. 26 to voluntary fees

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Electric Rates

Gridley v. Superior Court (2024) ___ Cal.App.5th ___ [2024 WL 4160416] (3rd DCA, Sept. 11, 2024)

- no Prop. 26 challenge to electric general fund transfer following rate decrease
- no takings claim under *Nollan* / *Dolan* outside the land use context

Prop. 26 Litigation

Citizens for Fair REU Rates v. City of Redding (2018) 6 Cal.5th 1

- Challenge to electric utility PILOT
- Trial court found grandfathered
- DCA found subject to Prop. 26 b/c adopted w/ biennial budget & remanded for cost justification
- Court concluded fees not made taxes by PILOT because non-retail-rate revenues were sufficient to cover it
- Did not reach grandfathering issue or whether cost reasonable b/c comparable to taxes IOUs pay

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Prop. 26 Litigation

Citizens for Fair REU Rates v. City of Redding (2018) 6 Cal.5th 1

- Gross proceeds of wholesale transactions treated as discretionary revenue
- 26 is plainly less demanding than 218
- Free-riders are a problem only if fee-payors cover them
- No duty to subsidize rates with discretionary revenue

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Prop. 26 Litigation

Similar GFT challenges against gas and electric utilities

- Alameda – voters approved GFT in 12/16
- Anaheim (water settled, City won power: *Palmer v. City* (2023) 90 Cal.App.5th 718)
- Burbank (settled)
- Glendale (unpub. Dec. 12/27/18, pub’n & review denied; plaintiffs’ remedy appeal denied in unpublished decision; no petition for review)

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Prop. 26 Litigation

- *Lejins v. Long Beach* – voter approval of GFT as tax lost in trial and DCA, SCOCA denied review
- Los Angeles (settled)
- *Hobbs v. Modesto Irrigation District* (lost liability phase; won remedy phase; plaintiffs settled for fees)
- *Green v. Palo Alto* (Won power, lost gas; settled on appeal)
- *Komesar v. Pasadena*, City won under *Wyatt,* appeal settled
- *Simpson v. Riverside*, RIC 1906168 (voter approved water GFT, remedies phase under submission as of 09/24)

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Prop. 26 & Related Litigation

Rancho Mirage Mobilehome Community LP v. Coachella Valley Water District, 2023 WL 7123771 (9th Cir. filed 10/30/23)

- Utility fees and charges are not property interests that can support takings claims

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Ratemaking Litigation

SB 1072 (Padilla, Steve, D-Chula Vista)

- States there is no refund remedy under Prop. 218 but agency must credit any overcollection against next ratemaking
- On Governor's desk as of 9/13/24

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Prop. 26 Litigation

Schmeer v. County of Los Angeles (2013) 213 CA4th 1310

- Challenge to provision of plastic bag ban requiring retailers to charge $0.10 for paper bags
- Because fee doesn't fund government, 26 doesn't apply

Prop. 26 Litigation

Webb v. City of Riverside (2018) 23 Cal.App.5th 244

- Challenge to general fund transfer from power utility rejected under 120-day statute of limitations of PUC §10004.5
- Changing the transfer formula (an expenditure) was not an "increase" that triggers new Prop. 26 claim
- Cited favorably in *Redding*

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Prop. 26 Litigation

Cal. Chamber of Commerce v. CARB (2017) 10 CA5th 604

- Greenhouse gas auctions did not exceed statutory authority under AB 32
  - Were not taxes under Prop. 13 because voluntarily paid for a valuable right (to emit carbon)
- Paves way for a new revenue strategy: use power to regulate to impose standard on industry and then allow businesses to buy around it

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Prop. 26 Litigation

Otay Mesa Water Dist. v. City of San Diego, Otay Water District v. City of San Diego, Riverside Superior Court Case No. RIC1804278

- Challenged San Diego's allocation of costs for recycled water to other utilities. Argues two recycled water systems should be costed separately
- Trial court ruled for San Diego concluding
  - No duty to set separate rates for 2 plants
  - Rates for recycled water were less than cost and therefore satisfied Prop. 26
- Remaining issues were to be tried in August 2024

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Other Service Fees

County Inmate Telephone Services Cases (2020) 48 Cal.App.5th 354

- Counties provide telephone services to inmates via concession agreements w/ carriers that provide substantial fees to counties

•Statute directs those fees to inmate welfare fund

•Class of inmates sued under Prop. 26

•DCA ruled they could not challenge the fee b/c they bear its economic, not legal, incidence

•This standing defense is important in many finance suits

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Regulatory Fees

Sutter's Place, Inc. v. City of San Jose (2024) ___ Cal.App.5th ___ [2024 WL 4002415]

- Prop. 26 and due process challenge to card room regulatory fees
- Deferential appellate review of trial court findings of proper apportionment
- Narrow view of what fee may recover (legislative activity, PRA request)
- Allows due process claim in ordinary rate-making challenge.

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Referenda on Fees

- Prop. 218 allows initiatives to repeal or reduce fees
- A fee cannot be referended
  - *Wilde v. City of Dunsmuir* (2020) 9 Cal.5th 1105
    - Disallowed referendum, overruling Court of Appeal's earlier, contrary decision
  - *HJTA v. Amador Water Agency* (2019) 36 Cal.App.5th 279
    - 3d DCA disagreed with its own decision in *Wilde*

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Development Impact Fees

AB 602 (Grayson, D- Contra Costa) GC 65940.1, 66016.5, 66019

- Limits development impact fees on housing, including AB 1600 fees, Quimby fees, construction excise taxes, and Mello-Roos taxes
- Requires nexus study and rough proportionality, including fees allocated per square foot and not per dwelling unit
- Requires HCD to develop model nexus study
- Effective 1/1/22

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Development Impact Fees

County of El Dorado v. Superior Court of El Dorado County (2019) 42 Cal.App.5th 620

- Statute of limitations to challenge DIFs is one-year
- But suit can be filed after each year's findings, so it serves to limit remedy, but not litigation exposure
- AB 1600 findings are burdensome, but it is very risky not to do a good job on them every year
- Limits *Walker v. City of San Clemente* (2015) 239 Cal.App.4th 1350 which had ordered refund of all fees collected since inception of fee

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Development Impact Fees

Hamilton & High, LLC v. City of Palo Alto (2023) 89 Cal.App.5th 528

- Parking in-lieu fees subject to AB 1600 even though they are optional
- Casts doubt on *El Dorado*
- Best to comply with AB 1600 for DIFs unless you implement them via a development agreement waiving suit

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Development Impact Fees

Barajas v. City of Petaluma, 1st DCA No. A165258 unpublished)

- Affirmed trial court ruling upholding City's AB 1600 findings
- Findings relying on nexus study were sufficient
- Age of study did not undermine findings
- Though statute now requires studies to be updated every 8 years.

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Development Impact Fees

- AB 571 Mayes, I-Rancho Mirage
  - Forbids “inclusionary zoning fees and in-lieu fees” on affordable units in density bonus projects
  - GC 65915.1
  - Essentially no opposition in the Legislature
  - Effective 1/1/22

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Development Impact Fees

AB 516 (Ramos, D-San Bernardino)

- Signed; effective 1/1/25
- Annual findings must report on status of each improvement identified in nexus study, any interfund loans, the number of payors entitled to refunds if fees not timely spent
- Audits must address project completion, too
- Duty to notify fee payors of right to audit

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Development Impact Fees

AB 1820 (Schiavo, D-Santa Clarita)

- On governor's desk as of 9/16/24
- Development applicants may request estimate of DIFs to be provided within 30 days
- On project approval, city must provide detailed list of estimated fees

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Fines and Penalties

Pimentel v. City of Los Angeles (9th Cir. 2024) ___ F.3d ___ [2024 WL 4113545]

- Overturned summary judgment for City, allowing 8th amendment challenge to the 100% penalty LA imposes for late payment of parking tickets
- Suggests some evidence is needed to justify penalty amounts
- One judge partly dissented and en banc review is possible

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Assessments

Silicon Valley Taxpayer's Ass'n v. Sta. Clara Co. Open Space Auth. (2008) 44 Cal.4th 431

- Independent judicial review of assessments
- Tighter definition of "special benefit"
- Open space and other services that benefit public broadly harder to justify
- Proportionality requirement unclear

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BID Assessments

Dahms v. Downtown Pomona PBID (2009) 174 CA4th 708 allows:

- exemption of residential property from assessment for security, streetscape maintenance & marketing
- discounted assessments for non-profits
- use of front-street frontage for apportionment, along with lot & building size
- Very generous to agency; later cases less so

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BID Assessments

Hill RHF Housing Partners, LP v. City of Los Angeles (2021) 12 Cal.5th 458

- Affordable housing owner challenged renewal of two LA BIDS, claiming assessment not proportionate to its benefit
- City & BIDs prevailed on the merits at trial
- DCA affirmed for failure to exhaust administrative remedies
- SCOCA reversed, eliminating this defense in most Prop. 218 & 26 cases absent legislation
- Remanded for DCA to review merits, on which city prevailed

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Park Assessments

Beutz v. Riverside Co. (2010) 184 CA4th 1516

- Park M&O can be 100% assessment financed b/c capital provided w/ other $
- Agency must always prove special benefit and proportional allocation — even if challenger doesn’t raise them
- Questions use of cost to allocate benefit

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Fire Suppression Assessments

Concerned Citizens v. West Point FPD, Cal. S. Ct. Case No. S195152 (2012)

- Sufficiency of engineer's report to show special benefit or proportionality
- Use of cost to allocate benefit
- Dismissed as moot and DCA opinion not republished

Davis v. Mariposa County Board of Supervisors (2019) 38 Cal.App.5th 1048

- County's trial court victory affirmed b/c plaintiff failed to appeal in 30 days allowed for validation actions
- Still no published case upholding assessment funding of services post-*West Point*

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Maintenance Assessments

Golden Hill Neighborhood Ass'n v. City of San Diego
(2011) 199 CA4th 416

- Invalidated maintenance district under 1972 Lighting & Landscaping Act for inadequate engineer's report (no basis for allocation of votes to City property)
- Helpfully limited DCA's *West Point* decision and provides guidance for engineers' reports

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Tourism Marketing Districts

TMD assessments have generated litigation under Prop. 26.

•Ontario prevailed on standing grounds;

•San Diego mooted by amendment to limit assessment to large hotels; fee award reversed on appeal; duplicative suits dismissed by trial court (*Reid* & unpublished victory for City)

•Palm Springs CVB won and then settled

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GHAD Assessments

Broad Beach GHAD v. 31506 Victoria Point, LLC (2022) 81 Cal.App.5th 1068

- Homeowners formed GHAD to fund beach restoration, approving two assessments without incident
- 2017 assessment to fund expensive Coastal Commission mandates drew controversy
- Trial court found insufficient justification for allocation of special benefit, insufficient general benefit, and concluded assessment should reflect cost of eminent domain to acquire construction access rights
- DCA affirmed, making funding of beach projects difficult

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Advice re Assessments

- Use a strong, current engineer's report
- Get legal review of reports
- Consider other funding sources (special taxes, perhaps by initiative) for funding of any but the most traditional assessment-funded facilities and services

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Constitutional Debt Limit

City of San José v. Howard Jarvis Taxpayers Association, SCOCA Case No. S285426)

- HJTA challenged pension obligation bond, arguing voter-approval required
- City won in trial court and DCA b/c
  - Pension obligation already existed, bond just financed it
  - Statute authorized the bond

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Questions?

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