

EXHIBIT 5.a.-A

AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1260

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Introduced by Assembly Member Caballero

February 23, 2007

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An act to amend Section 53750 of, and to add Sections 53755 and 53756 to, the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1260, as amended, Caballero. Local governments: taxes, fees, assessments, and charges: notice.

~~(1) Articles~~

~~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 Article XIII C and Article XIII D of the California Constitution, and defines "record owner" to mean the owner of a parcel whose name and address appears on the last equalized secured property tax assessment roll, or in the case of a public entity, the state or the United States, the representative of that public entity at the address of that entity known to the agency.~~

~~This bill would, instead, define "record owner" to mean, for the purposes of a fee or charge subject to the requirements of Section 6 of Article XIII D of the California Constitution, the person or entity who requests or receives the services for which the fee or charge is levied and who is directly liable to the agency for payment of the fee or charge, and for all other purposes, the owner of a parcel whose name and address~~

~~appears on the last equalized secured property tax assessment roll, or in the case of any public entity, the state, or the United States, record owner means the representative of that public entity at the address of that entity known to the agency, as specified.~~

~~(2) Existing~~

~~Existing~~ statutory law provides notice, protest, and hearing procedures for the levying of new or increased assessments by local government agencies pursuant to Articles XIII C and XIII D of the California Constitution.

~~This bill would authorize any record owner, as specified, to file a protest or protests, as specified, to a fee or charge subject to Section 6 or Article XIII D of the California Constitution.~~

*This bill would authorize the agency providing the property-related service to a parcel to provide the required notice of a proposed increase of an existing fee or charge in the agency's regular billing statement or any other mailing by the agency to the address at which the agency customarily mails the billing statement for the fee or charge. The bill would also authorize the agency providing the property-related service to a parcel to provide the required notice of a proposed new fee or charge to be mailed to the address at which the service funded by the proposed fee or charge will be provided, or in the manner authorized for notice of a proposed increased fee or charge where the agency is provided an existing property related service to the address. The bill would require the agency, if the agency desires to preserve any authority it may have to record or enforce a lien on the parcel to which service is provided, to also mail notice to the record owner's address shown on the last equalized assessment role, if that address is different than the billing or service address. The bill would also authorize any agency that bills, collects, and remits a fee or charge on behalf of another agency to provide notice on behalf of the other agency, as specified.*

*The bill would allow one written protest per parcel, as specified, to be counted in calculating a majority protest to a proposed new or increased fee or charge subject to Section 6 of Article XIII D of the California Constitution.*

This bill would also impose a 120-day limit on the commencement of a judicial action or proceeding to attack, review, set aside, void, or annul an ordinance, resolution, or motion adopting a new fee or charge, or increasing an existing fee or charge, as specified.

Vote: majority. Appropriation: no. Fiscal committee: ~~yes-no~~.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 53755 is added to the Government Code,*  
2     *to read:*

3     53755. (a) (1) *The notice required by paragraph (1) of*  
4     *subdivision (a) of Section 6 of Article XIII D of the California*  
5     *Constitution of a proposed increase of an existing fee or charge*  
6     *for a property-related service being provided to a parcel may be*  
7     *given by including it in the agency's regular billing statement for*  
8     *the fee or charge or by any other mailing by the agency to the*  
9     *address to which the agency customarily mails the billing statement*  
10    *for the fee or charge.*

11    (2) *The notice required by paragraph (1) of subdivision (a) of*  
12    *Section 6 of Article XIII D of the California Constitution of a*  
13    *proposed new fee or charge may be mailed to the address at which*  
14    *the property-related service funded by the fee or charge will be*  
15    *provided or may be given in the manner authorized for notice of*  
16    *an increase of a fee or charge if the agency is currently providing*  
17    *an existing property-related service to the address.*

18    (3) *If the agency desires to preserve any authority it may have*  
19    *to record or enforce a lien on the parcel to which service is*  
20    *provided, the agency shall also mail notice to the record owner's*  
21    *address shown on the last equalized assessment role if that address*  
22    *is different than the billing or service address.*

23    (b) *One written protest per parcel, filed by any owner or tenant*  
24    *of the parcel, shall be counted in calculating a majority protest to*  
25    *a proposed new or increased fee or charge subject to the*  
26    *requirements of Section 6 of Article XIII D of the California*  
27    *Constitution.*

28    (c) *Any agency that bills, collects, and remits a fee or charge*  
29    *on behalf of another agency may provide the notice required by*  
30    *Section 6 of Article XIII D of the California Constitution on behalf*  
31    *of the other agency.*

32    *SEC. 2. Section 53756 is added to the Government Code, to*  
33    *read:*

34    53756. (a) *Any judicial action or proceeding to attack, review,*  
35    *set aside, void, or annul an ordinance, resolution, or motion*  
36    *adopting a new fee or charge, or increasing an existing fee or*  
37    *charge subject to Section 6 of Article XIII D of the California*  
38    *Constitution, including a challenge to any provision of an*

1 ordinance, resolution, or motion that increases a fee or charge  
2 without further action of the governing body of the agency, shall  
3 be commenced within 120 days of the effective date of the  
4 ordinance, resolution, or motion.

5 (b) Any action by a local agency or interested person under this  
6 section shall be brought pursuant to Chapter 9 (commencing with  
7 Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

8 (c) This section shall not apply to any fee or charge for which  
9 another statute, other than Section 338 of the Code of Civil  
10 Procedure, establishes a shorter time for judicial challenge.

11 (d) This section shall not be construed to excuse compliance  
12 with state or local laws regulating claims for refunds of any fee  
13 or charge claimed or determined to be invalid.

14 ~~SECTION 1. Section 53750 of the Government Code is~~  
15 ~~amended to read:~~

16 ~~53750. For purposes of Article XIII C and Article XIII D of~~  
17 ~~the California Constitution and this article the following terms~~  
18 ~~have the following meanings:~~

19 (a) ~~“Agency” means any local government as defined in~~  
20 ~~subdivision (b) of Section 1 of Article XIII C of the California~~  
21 ~~Constitution.~~

22 (b) ~~“Assessment” means any levy or charge by an agency upon~~  
23 ~~real property that is based upon the special benefit conferred upon~~  
24 ~~the real property by a public improvement or service, that is~~  
25 ~~imposed to pay the capital cost of the public improvement, the~~  
26 ~~maintenance and operation expenses of the public improvement,~~  
27 ~~or the cost of the service being provided. “Assessment” includes,~~  
28 ~~but is not limited to, “special assessment,” “benefit assessment,”~~  
29 ~~“maintenance assessment,” and “special assessment tax.”~~

30 (c) ~~“District” means an area that is determined by an agency to~~  
31 ~~contain all of the parcels that will receive a special benefit from a~~  
32 ~~proposed public improvement or service.~~

33 (d) ~~“Drainage system” means any system of public~~  
34 ~~improvements that is intended to provide for erosion control,~~  
35 ~~landslide abatement, or for other types of water drainage.~~

36 (e) ~~“Extended,” when applied to an existing tax or fee or charge,~~  
37 ~~means a decision by an agency to extend the stated effective period~~  
38 ~~for the tax or fee or charge, including, but not limited to,~~  
39 ~~amendment or removal of a sunset provision or expiration date.~~

1 (f) ~~“Flood control” means any system of public improvements~~  
2 ~~that is intended to protect property from overflow by water.~~

3 (g) ~~“Identified parcel” means a parcel of real property that an~~  
4 ~~agency has identified as having a special benefit conferred upon~~  
5 ~~it and upon which a proposed assessment is to be imposed, or a~~  
6 ~~parcel of real property upon which a proposed property-related~~  
7 ~~fee or charge is proposed to be imposed.~~

8 (h) (1) ~~“Increased,” when applied to a tax, assessment, or~~  
9 ~~property-related fee or charge, means a decision by an agency that~~  
10 ~~does either of the following:~~

11 (A) ~~Increases any applicable rate used to calculate the tax,~~  
12 ~~assessment, fee or charge.~~

13 (B) ~~Revises the methodology by which the tax, assessment, fee~~  
14 ~~or charge is calculated, if that revision results in an increased~~  
15 ~~amount being levied on any person or parcel.~~

16 (2) ~~A tax, fee, or charge is not deemed to be “increased” by an~~  
17 ~~agency action that does either or both of the following:~~

18 (A) ~~Adjusts the amount of a tax or fee or charge in accordance~~  
19 ~~with a schedule of adjustments, including a clearly defined formula~~  
20 ~~for inflation adjustment that was adopted by the agency prior to~~  
21 ~~November 6, 1996.~~

22 (B) ~~Implements or collects a previously approved tax, or fee or~~  
23 ~~charge, so long as the rate is not increased beyond the level~~  
24 ~~previously approved by the agency, and the methodology~~  
25 ~~previously approved by the agency is not revised so as to result in~~  
26 ~~an increase in the amount being levied on any person or parcel.~~

27 (3) ~~A tax, assessment, fee or charge is not deemed to be~~  
28 ~~“increased” in the case in which the actual payments from a person~~  
29 ~~or property are higher than would have resulted when the agency~~  
30 ~~approved the tax, assessment, or fee or charge, if those higher~~  
31 ~~payments are attributable to events other than an increased rate or~~  
32 ~~revised methodology, such as a change in the density, intensity,~~  
33 ~~or nature of the use of land.~~

34 (i) ~~“Notice by mail” means any notice required by Article XIII C~~  
35 ~~or XIII D of the California Constitution that is accomplished~~  
36 ~~through a mailing, postage prepaid, deposited in the United States~~  
37 ~~Postal Service and is deemed given when so deposited. Notice by~~  
38 ~~mail may be included in any other mailing to the record owner~~  
39 ~~that otherwise complies with Article XIII C or XIII D of the~~  
40 ~~California Constitution and this article, including, but not limited~~

1 to, the mailing of a bill for the collection of an assessment or a  
2 property-related fee or charge.

3 (j) "Record owner" means either of the following:

4 (1) For a fee or charge subject to the requirements of Section 6  
5 of Article XIII D, other than a fee or charge that is collected by an  
6 agency in the same manner as the ad valorem property tax, the  
7 person or entity that requests or receives the services for which  
8 the fee or charge is levied and that is directly liable to the agency  
9 for payment of the fee or charge. An agency may rely on its billing  
10 records to identify the name and address of, and may send notices  
11 to the record owner as defined in this paragraph, or the owner's  
12 representative, shown on the records of the agency.

13 (2) For all other purposes, the owner of a parcel whose name  
14 and address appears on the last equalized secured property tax  
15 assessment roll. In the case of any public entity, the State of  
16 California, or the United States, "record owner" means the  
17 representative of that public entity at the address of that entity  
18 known to the agency. However, if the agency desires to preserve  
19 any authority it may have to record or enforce a lien on the parcel  
20 to which service is provided, then the agency must give notice to  
21 both the record owner or owner's representative pursuant to  
22 paragraph (1) and the owner of record pursuant to this paragraph,  
23 if they are different. Whenever a record owner is entitled to notice  
24 under paragraph (1), only that record owner may file a written  
25 protest.

26 (k) "Registered professional engineer" means an engineer  
27 registered pursuant to the Professional Engineers Act (Chapter 7  
28 (commencing with Section 6700) of Division 3 of the Business  
29 and Professions Code).

30 (l) "Vector control" means any system of public improvements  
31 or services that is intended to provide for the surveillance,  
32 prevention, abatement, and control of vectors as defined in  
33 subdivision (k) of Section 2002 of the Health and Safety Code and  
34 a pest as defined in Section 5006 of the Food and Agricultural  
35 Code.

36 (m) "Water" means any system of public improvements intended  
37 to provide for the production, storage, supply, treatment, or  
38 distribution of water.

39 SEC. 2. Section 53755 is added to the Government Code, to  
40 read:

1     ~~53755. (a) For a fee or charge subject to the requirements of~~  
2 ~~Section 6 of Article XIII D of the California Constitution, any~~  
3 ~~record owner as defined in subdivision (j) of Section 53750 may~~  
4 ~~file a protest, but only one protest shall be counted for each parcel~~  
5 ~~if multiple protests are filed for that parcel. However, whenever a~~  
6 ~~record owner, as defined in paragraph (1) of subdivision (j) of~~  
7 ~~Section 53750, is entitled to notice, only the written protest filed~~  
8 ~~by that record owner shall be counted. As used in this section and~~  
9 ~~in subdivision (j) of Section 53750, parcel includes each separate~~  
10 ~~billing address or service connection to which an agency provides~~  
11 ~~service and for which a person or entity is entitled to notice~~  
12 ~~pursuant to paragraph (1) of subdivision (j) of Section 53750.~~

13     ~~(b) Any agency that bills, collects, and remits a fee or charge~~  
14 ~~on behalf of another agency may provide the notice required by~~  
15 ~~Section 6 of Article XIII D of the California Constitution on behalf~~  
16 ~~of the other agency.~~

17     ~~SEC. 3. Section 53756 is added to the Government Code, to~~  
18 ~~read:~~

19     ~~53756. (a) Any judicial action or proceeding to attack, review,~~  
20 ~~set aside, void, or annul an ordinance, resolution, or motion~~  
21 ~~adopting a new fee or charge, or increasing an existing fee or~~  
22 ~~charge, adopted by an agency defined in Section 2 of Article~~  
23 ~~XIII D of the California Constitution, shall be commenced within~~  
24 ~~120 days of the effective date of the ordinance, resolution, or~~  
25 ~~motion.~~

26     ~~If an ordinance, resolution, or motion provides for an automatic~~  
27 ~~adjustment that increases a fee or charge, any action or proceeding~~  
28 ~~to attack, review, set aside, void, or annul the increase shall be~~  
29 ~~commenced within 120 days of the effective date of any increase.~~

30     ~~(b) Any action by a local agency or interested person under this~~  
31 ~~section shall be brought pursuant to Chapter 9 (commencing with~~  
32 ~~Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.~~

33     ~~(c) This section does not apply to any fee or charge for which~~  
34 ~~another statute, other than Section 338 of Code of Civil Procedure,~~  
35 ~~establishes a specific time and procedure for judicial challenge.~~