

CASTOFF
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Legislative and Judicial Update

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Legislation

1. AB 474 (Chapter 444, Statutes of 2009) – additional provisions pertaining to Chapter 29 contractual assessments
 - a. added “water efficiency improvements” to eligible list and correspondingly expanded the list of local agencies authorized to provide Chapter 29 contractual assessment financing of water efficiency improvements
 - b. declared that the contractual assessments:
 - i. ARE assessments for lien priority purposes under Gov’t Code Section 53930 and following, but
 - ii. ARE NOT assessments for purposes of Section 4 of Article XIID (Prop 218) and the assessment ballot procedures
2. AB 1192 (not adopted) – would have prohibited some categories of “asset transfer” lease-leaseback or sale-leaseback deals
 - a. sponsored by HJTA, who see this structure as avoidance of having to obtain voter approval for incurring debt payable from a local agency’s general fund
 - b. would NOT have applied, as drafted, to deals in which the “third party” was not an “entity that is controlled by” the legislative body of the local agency (e.g., would not apply to a deal for a city in which the city arranged for the assistance of the ABAG Finance Authority to serve as the third party)
3. AB 1388 (Chapter 529, Statutes of 2009) – pertaining to G.O. bonds
 - a. added Gov’t Code Section 53508.9 which expanded authorization for local government agencies (defined to exclude school or community college districts) to sell G.O. bonds by negotiated sale; **provided that**, prior to the negotiated sale, the legislative body adopts a resolution with certain prescribed contents (including the reasons for choosing a negotiated sale and the identity of bond counsel)
 - b. repealed Gov’t Code Section 53508.5 which had, with some exceptions, restricted the spread between max. and minimum annual debt service to 10%

4. SB 279 (vetoed by Governor) – would have amended the Mello-Roos Act to authorize establishment of Chapter 29-type programs using special tax and special tax bond financing
 - a. currently, such programs are being authorized by charter cities through the adoption of ordinances under their “municipal affairs” powers
 - b. Berkeley was the first such program, other charter cities are following
5. SB 310 (Chapter 577, Statutes of 2009) – pertaining to imposition of fees to fund watershed improvement plans
 - a. of possible interest to CASTOFF members – provided conditional authorization to cities, counties or special districts to impose an exaction called a “regulatory fee” (the significance of which is that it would not be subject to Section 6 of Article XIID)
 - b. proceeds could be used to pay costs associated with
 - i. preparation of a watershed improvement plan, and/or
 - ii. the implementation of a plan once approved by a regional water quality control board
 - c. the fee to be imposed “on activities that generate or contribute to runoff, stormwater, or surface runoff pollution

“activities” defined to mean “the operations and existing structures and improvements subject to regulation under an NPDES permit for municipal separate storm sewer systems.”
 - d. condition on the fee – cannot be imposed “solely as an incident of property ownership”
6. SB 321 (Chapter 580, Statutes of 2009) – pertaining to assessment ballot procedures
 - a. amended Gov’t Code Section 53753 to:
 - i. require that envelope by which notice of hearing and assessment ballot are mailed to property owners have “OFFICIAL BALLOT ENCLOSED” on it in at least 16-point bold type
 - ii. require that an assessment ballot tabulation be conducted in public view at an announced time and location which enables interested persons to monitor the process whenever the tabulation is being conducted by either:
 - (A) agency personnel, or

- (B) an outside service provider who “participated in the research, design, engineering, public education or promotion of the assessment,” or any affiliate of such a provider
- iii. require that assessment ballots be preserved for a minimum of 2 years

Court Decisions

1. Tiburon vs. Bonander (“Bonander I” – State Supreme Court Case No. S151370 – June, 2009) – The California Supreme Court reversed the lower courts and discarded the “**860 trap for the unwary**” by which the Town had argued successfully in the lower courts that, because the plaintiffs sought to invalidate all of the assessments, the case should be regarded as a “reverse validation” under Sections 860 and following, California Code of Civil Procedure.
2. Tiburon vs. Bonander (“Bonander II” – First District Court of Appeals Case No. A119918 – December, 2009) – The Court of Appeals rules that the supplemental assessments levied by the Town are invalid.
 - a. The bad news – The Court finds the assessments invalid on the basis of two asserted flaws:
 - i. The assessments were determined on the basis of differential cost, using benefit zones, rather than differential benefits, thereby violating the requirement that the assessments be determined in proportion to the special benefits received.
 - ii. The exclusion of certain benefited parcels resulted in imposing assessments on the parcels assessed which were again not in proportion to the estimated benefits.
 - b. The good news – The Court otherwise upheld the three-pronged method of assessment, which considered (i) improved property aesthetics, (ii) improved safety and (iii) improved service reliability.
3. Dahms vs. Downtown Pomona Property (Second District Court of Appeals Case No. B183545 – May, 2009) – The Court of Appeals, on remand from the California Supreme Court after its decision in the *Santa Clara County Open Space Authority* case, upheld the PBID assessments imposed by the City of Pomona.
 - a. The technical issue of how to measure compliance with the 45-day mailed notice requirement of Section 4 of Article XIID (Prop. 218) is resolved – you can hold the hearing on the 45th day.
 - b. The Court upholds “discounts” for parcels owned by nonprofit entities

Note – Footnote 2 and the exemption of residential parcels

- c. The Court upholds the three-pronged method of assessment, which considered (i) street frontage, (ii) building size and (iii) lot size.
 - d. The Court upholds the adequacy of the record to show that the assessments are limited to the reasonable cost of providing special benefit and do not include cost of general benefits.
 - e. The opinion provides some helpful discussion about how to distinguish assessments being challenged from the assessments invalidated in the *Santa Clara County Open Space Authority* decision.
4. Paland vs. Brooktrails Township Community Services District (First District Court of Appeals Case No. A122630 – December, 2009) – The Court of Appeals upholds the District’s monthly minimum service fees against challenge that they are either “standby charges” or “assessments” and hence invalid because imposed without the assessment ballot procedures required for imposing such exactions.
- a. The Court held that, because the fees are imposed only on parcels that are connected to the water or sewer system in question, they are not standby charges, even though they are charged to the parcels irrespective of whether the owner is actually using the water or sewer services during the month in question.
 - b. The Court rejects the argument that the exactions should be classified as “assessments,” but without any helpful or substantive discussion to support the conclusion.
5. Beutz vs. County of Riverside (Fourth District Court of Appeals Case No. E046318) – In a Tentative Opinion (undated) bearing the notation “Not to be Published in Official Reports,” the Court of Appeals, relying heavily upon the *Santa Clara County Open Space Authority* decision, reverses the Riverside County Superior Court and remands the case to the Superior Court for entry of judgment in favor of the plaintiff, invalidating the 1972 Act landscaping maintenance district assessments for a relatively large-scale assessment district for the unincorporated community of Wildomar.
- a. Of note – this assessment district bears a strong resemblance to the one upheld by the California Supreme Court in 1992 in the case of *Knox vs. City of Orland*, which was part of what brought us Prop. 218
 - b. Only residential parcels were assessed, and the method of spread was simply \$28 per EDU per year, indexed to increase up to \$45
6. Azuza Land Partners, LLC vs. State of California, Department of Industrial Relations (L.A. County Superior Court Case No. BS117259 – June, 2009) – The Superior Court rendered judgment upholding a prevailing wage determination of DIR in a development project for which CFD funding was being used for a portion of the public improvements