

2-18-2016

LOCAL GOVERNMENT. WATER, SEWER,
STORMWATER, AND FLOOD CONTROL
SERVICES. FEE STRUCTURES. INITIATIVE
CONSTITUTIONAL AMENDMENT.

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*Law Offices of***OLSON****HAGEL &****FISHBURN****LLP**

January 19, 2016

VIA MESSENGER

Office of the Attorney General
 Attention: Ashley Johansson, Initiative Coordinator
 1300 "I" Street
 Sacramento, CA 95814

RECEIVED**JAN 19 2016**

INITIATIVE COORDINATOR
 ATTORNEY GENERAL'S OFFICE

**RE: Submission of Amendment to Statewide Initiative Measure -
 The California Water Conservation, Flood and Stormwater
 Management Act of 2016, No. 15-0116**

Dear Ms. Johansson:

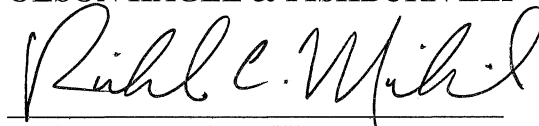
As you know, we serve as counsel for the proponents of the proposed statewide initiative, "The California Water Conservation, Flood Control and Stormwater Management Act of 2016." The proponents of the proposed initiative are Christopher McKenzie, Tim Quinn, and Matthew Cate. On their behalf, we are enclosing the following documents:

- The amended text of "The California Water Conservation, Flood Control and Stormwater Management Act of 2016"
- A red-line version showing the changes made in the amended text
- Signed authorizations from each of the proponents for the submission of the amended text together with their requests that the Attorney General's Office prepare a circulating title and summary using the amended text.

Please continue to direct all inquiries or correspondence relative to this proposed initiative to us at the address listed below:

Lance H. Olson & Richard Miadich
 Olson, Hagel & Fishburn LLP
 555 Capitol Mall, Suite 1425
 Sacramento, CA 95814

Very truly yours,

OLSON HAGEL & FISHBURN LLP


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VIA MESSENGER

January 15, 2016

Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814

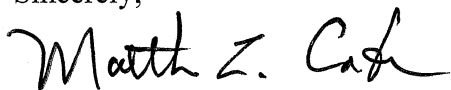
Attention: Ashley Johansson, Initiative Coordinator

Re: Submission of Amendment to The California Water Conservation, Flood Control and Stormwater Management Act of 2016 (15-0116)

Dear Ms. Johansson:

On December 14, 2015 I submitted a proposed statewide initiative titled "The California Water Conservation, Flood Control and Stormwater Management Act of 2016" ("Initiative") and a request that the Attorney General prepare a circulating title and summary pursuant to section 10(d) of Article II of the California Constitution. Pursuant to Elections Code section 9002(b), I hereby submit timely amendments to the text of the Initiative. As a proponent of the Initiative, I approve the submission of the amended text to the Initiative and I declare that the amendment is reasonably germane to the theme, purpose, and subject of the Initiative. I request that the Attorney General prepare a circulating title and summary using the amended Initiative.

Sincerely,



Matthew Cate

Executive Director, California State Association of Counties

VIA MESSENGER

January 15, 2016

Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814

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Sincerely,

A handwritten signature in black ink, appearing to read "Timothy H. Quinn", with a long horizontal line extending to the right.

Timothy H. Quinn

Executive Director, Association of California Water Agencies

VIA MESSENGER

January 15, 2016

Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814

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Sincerely,



Christopher McKenzie

Executive Director, League of California Cities

**The California Water Conservation, Flood Control
And Stormwater Management Act of 2016**

SECTION 1. Title

This measure shall be known as the California Water Conservation, Flood Control and Stormwater Management Act 2016

SECTION 2. Findings, Declarations and Purposes

- A. California's historic drought and the extensive heavy floods and property damage that often accompany heavy rains require that California local communities have the tools needed to further encourage conservation and discourage excessive use of water; to effectively manage and increase water supplies; to capture, clean and eliminate pollution from local water sources; and to better protect people and property from the dangers of floods.
- B. Effective local management of water supplies includes authorizing local agencies to design rates to encourage water conservation and discourage excessive use of water.
- C. Local agencies should also invest in infrastructure to capture and clean water polluted by toxic chemicals and trash; recycle and reuse rainwater and stormwater runoff; and to prevent toxic stormwater and urban runoff from contaminating sources of drinking water, including rivers, lakes, streams, and groundwater, and polluting beaches, coastal waters, and wetlands.
- D. California must also improve local flood control by better capturing and managing storm and flood waters and upgrading storm drains, sewer and drainage systems to protect properties from floods and increase local supplies of water available for public use.
- E. Existing state laws governing the funding of local water supplies, clean water, water conservation and flood water protection were not developed with California's current water realities in mind.
- F. Furthermore, local governments face thousands of dollars in fines per day from the state and federal governments if they cannot meet obligations under the federal Clean Water Act and state laws and regulations to adequately capture and treat toxic stormwater and urban runoff.

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- G. An alternative method for funding critical local water supplies, water quality, water conservation and flood protection projects is needed.
- H. This measure establishes an alternative funding method that authorizes local agencies to:
 - i. Set rates for customers to encourage water conservation, prevent waste, and discourage excessive use of water.
 - ii. Levy fees or charges, subject to ratepayer protest, for flood control, and for management of stormwater to protect coastal waters, rivers, lakes, streams, groundwater and other sources of drinking water from contamination and to comply with the federal Clean Water Act and state laws and regulations.
 - iii. Use fees or charges to reduce water, and sewer fees or charges for low-income customers.
- I. Any local agency that utilizes this alternative funding method for water, flood control, stormwater, or sewer service should be required to adhere to strict accountability, transparency and ratepayer protections. This includes:
 - i. Providing local ratepayers with a description of the need for the proposed fee or charge and a list of the projects and purposes projected to be funded by any proposed fee or charge in advance of any public hearing or consideration of the fee or charge;
 - ii. Posting the description of the proposal on the agency's Internet website with all applicable exhibits;
 - iii. Providing local ratepayers a notice of the date and time of the public hearing the local agency will hold on the proposed fee or charge;
 - iv. If written protests against the fee or charge are presented by a majority of persons to whom the local agency sent the notice about the proposal then the local agency shall not impose, increase or extend the fee or charge;
 - v. All money must be spent for the local purpose for which the fee or charge was imposed and cannot be taken by state government;
 - vi. Revenues derived from the fee or charge shall not exceed the reasonable cost to the local agency of providing the water, flood control, stormwater, or sewer service or be used for any purpose other than that for which it was imposed;
 - vii. The manner in which the costs are allocated to a fee payor shall bear a fair or reasonable relationship to the fee payor's burden on or benefits received from the water, flood control, stormwater, or sewer service;
 - viii. The initiative power of voters may be used to repeal or reduce the fee or charge in the future with the filing of a petition calling for an election on the question;
 - ix. Independent annual audits shall be made available to the public showing how all funds are spent.

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- J. This new funding method will allow local agencies to invest in the water supplies, water quality, flood protection and water management and conservation programs we need, while guaranteeing a high level of accountability and ratepayer protections.

SECTION 3. Section 8 is hereby added to Article X of the California Constitution to read as follows:

SEC. 8 Water, Flood Control, Stormwater, and Sewer Service

(a) Alternative funding method. This section provides alternative procedures and requirements for funding water service, flood control service, stormwater service, and sewer service independent of any other procedures and requirements in this Constitution for funding these services.

(1) A local agency that adheres to the procedures and requirements of this section, including the strict accountability requirements to protect local ratepayers, may use at its discretion, the provisions of this section instead of any other procedures or requirements in this Constitution for funding the cost of providing water service, flood control service, stormwater service, and sewer service only if undertaken voluntarily and at the sole discretion of the local agency.

(2) The revenues derived from the fees or charges imposed in accordance with this section may only be used by the local agency that imposed, increased or extended the fee or charge, and like other fees or charges imposed, increased or extended by local agencies, the Legislature is prohibited from reallocating, transferring, borrowing, appropriating, restricting the use of, or otherwise using the proceeds of such fees or charges.

(b) Definitions. As used in this section:

(1) "Fee" or "charge" means any levy other than an ad valorem tax, a special tax, or an assessment, imposed by a local agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for water service, flood control service, stormwater service, or sewer service having a direct relationship to property ownership.

(2) "Flood control service" means any system of public improvements, facilities, projects, or services for the collection, conveyance, drainage, control, conservation, or management, of flood water to: (A) reduce the risk of flooding of public or private property, or (B) comply with federal or state laws, rules and regulations.

(3) "Local agency" means any city, county, city and county, including a charter city or county, special district, or any other local or regional governmental entity.

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(4) "Property ownership" shall be deemed to include tenancies of real property where tenants are directly liable to pay the fee or charge.

(5) "Sewer service" means any system of public improvements, facilities, projects, or services for the collection, conveyance, conservation, drainage, disposal, recycling or treatment of dry weather runoff, sewage or waste to: (A) conserve and protect sources of drinking water, such as rivers, lakes, streams and groundwater, or the environment, such as beaches, coastal waters, and wetlands, from toxic chemicals, biological contaminants, and other pollutants; (B) protect public health and safety; or (C) comply with federal or state laws, rules, and regulations.

(6) "Stormwater service" means any system of public improvements, facilities, projects or services for the collection, conveyance, conservation, drainage, disposal, recycling or treatment of stormwater and dry weather runoff to: (A) protect sources of drinking water, such as rivers, lakes, streams and groundwater, or the environment, such as beaches, coastal waters, and wetlands from toxic chemicals, biological contaminants, and other pollutants; (B) protect public health and safety; (C) conserve water; or (D) comply with federal or state laws, rules and regulations.

(7) "Water service" means any system of public improvements, facilities, projects or services intended to provide for the production, management, storage, supply, treatment, recycling, conservation or distribution of water from any source.

(c) Requirements for new, increased or extended fees or charges. A fee or charge for water service, flood control service, stormwater service, or sewer service shall not be imposed, increased, or extended by a local agency pursuant to this section unless it meets all of the following requirements:

(1) Revenues derived from the fee or charge shall not exceed the reasonable cost to the local agency of providing the water service, flood control service, stormwater service, or sewer service.

(2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

(3) The manner in which the costs of the water service, flood control service, stormwater service, or sewer service are allocated to a fee payor shall bear a fair or reasonable relationship to the fee payor's burdens on or benefits received from the water service, flood control service, stormwater service, or sewer service.

(d) Conservation fee or charge; low-income households. A local agency that imposes, extends, or increases a fee or charge pursuant to this section may do either or both of the following:

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(1) Allocate the cost of water service, flood control service, stormwater service or sewer service by increasing or decreasing the amount of a fee or charge as part of a rate structure reasonably designed to encourage water conservation and resource management in furtherance of the policy established in section 2;

(2) Increase the amount of a fee or charge to derive revenues that do not exceed the reasonable cost of reducing such fee or charge for lower-income households.

(e) Notice, public hearing and majority protest. A local agency shall comply with the procedures of this subdivision in imposing, increasing, or extending a fee or charge for water service, flood control service, stormwater service, or sewer service pursuant to this section:

(1) The local agency shall provide written notice by mail of the new fee or charge or the proposed increase in or extension of an existing fee or charge to the fee payor listed in the local agency's billing, or customer service records or other appropriate records. If the fee or charge is or will be imposed on a parcel, the local agency shall provide written notice to the record owner as provided in paragraph (4). The local agency may include the notice in the agency's regular billing statement for the fee or charge to the person at the address to which the agency customarily mails the billing statement for water service, flood control service, stormwater service, or sewer service. If the customer is billed only electronically, the agency shall provide notice by mail.

(2) The notice required by paragraph (1) shall include the amount of the fee or charge proposed to be imposed on the recipient of the notice or the basis upon which the amount of the fee or charge will be calculated, together with the date, time and location of the public hearing on the fee or charge. The notice also shall state that if written protests against the fee or charge are presented by a majority of persons to whom the local agency sent the notice required by paragraph (1), then the local agency shall not impose, increase or extend the fee or charge.

(3) The notice required by paragraph (1) shall include a general description of the services, facilities and improvements projected to be funded with the proceeds derived from the new fee or charge or proposed increase in, or extension of the fee or charge. A more complete description of the projected services, facilities and improvements, including any applicable exhibits, shall be made available at an accessible location and on the local agency's Internet website.

(4) If the local agency desires to preserve any authority it may have to record or enforce a lien on the parcel to which service is provided, the local agency shall also mail notice to the record owner's address shown on the last equalized assessment roll if that address is different than the billing address.

(5) The local agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice required by paragraph (1). At the

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public hearing, the local agency shall consider all oral and written protests against the fee or charge. If written protests against the fee or charge are presented by a majority of persons to whom the local agency sent the notice required by paragraph (1), then the local agency shall not impose, increase or extend the fee or charge. One written protest per service address shall be counted in calculating a majority protest pursuant to this paragraph.

(f) Burden of proof. The local agency bears the burden of proving by a preponderance of the evidence that the amount of a fee or charge is no more than necessary to cover the reasonable costs of the water service, flood control service, stormwater service, or sewer service, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the water service, flood control service, stormwater service, or sewer service. A fee or charge levied pursuant to and in compliance with this section is not a tax

(g) Initiative power for fees or charges. Notwithstanding any other provision of this Constitution, including, but not limited to Sections 8 and 9 of Article II, the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any fee or charge for water service, flood control service, stormwater service, or sewer service adopted, increased or extended pursuant to this section. The power of the initiative to affect such fees or charges shall be applicable to all local agencies and neither the Legislature nor any local government charter shall impose a signature requirement higher than that applicable to statewide statutory initiatives.

(h) Mandatory audit. Any local agency that approves a fee or charge for water service, flood control service, stormwater service, or sewer service in accordance with this section shall cause to be prepared an independent financial audit of the receipt and expenditure of the revenues derived from the fee or charge. Such an audit may be part of a comprehensive audit of the agency's finances, but the audit shall identify the revenues received and expended in accordance with this section with sufficient clarity to help ratepayers compare the use of the funds to the description provided in paragraph (3) of subdivision (e).

SECTION 4. Severability

If the provisions of this act, or part thereof, are for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect and to this end the provisions of this act are severable.

SECTION 5. Conflicting Measures

It is the intent of the people that in the event that this measure and another measure relating to the establishment of an alternative method of imposing, increasing, or extending fees or charges to fund water service, flood control service, stormwater

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service, or sewer service appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure, and if approved by the voters, this measure shall take effect notwithstanding.

SECTION 6. Liberal Construction

The provisions of this act shall be liberally construed in order to effectuate its purposes and the intent of the voters to provide local agencies alternative procedural and substantive requirements for imposing fees and charges for water service, flood control service, stormwater service, and sewer service from those otherwise found in the Constitution.

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

LOCAL GOVERNMENT. WATER, SEWER, STORMWATER, AND FLOOD

CONTROL SERVICES. FEE STRUCTURES. INITIATIVE CONSTITUTIONAL

AMENDMENT. Establishes alternative process for local government to impose fees for water, sewer, stormwater, and flood control services, as defined, without voter approval. Authorizes fee structures that recover reasonable costs of providing service, encourage water conservation and resource management, and provide fee reductions for low-income households. Requires notice of and public hearing on proposed fees. Allows fee payers to prevent proposed fee by majority filing written protests. Prohibits use of fee revenues for other purposes. Requires independent audit of revenues and expenditures. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: **Increased local government revenues and spending for flood control services and stormwater management in the range of low hundreds of millions of dollars up to more than \$1 billion annually, depending on future actions by local governing boards and voters.** (15-0116.)