

Governor Brown Signs SB 231 Regarding Stormwater Fees

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SB 231 is the Legislature's latest response to the growing budgetary problem of stormwater discharge (NPDES) permits. The Governor recently signed SB 231 into law. As stormwater permits and their costs become increasingly onerous, cities and counties have struggled to identify dedicated funding sources to pay for their permit obligations.

SB 231 addresses how Proposition 218 applies to fees for municipal stormwater systems. Proposition 218 is the voter initiative that amended California's constitution to strictly limit cities' power to impose fees for property-related services, such as water, sewer, refuse collection and stormwater systems. As important here, Proposition 218 requires a public hearing with a majority protest process before adopting any fees for a property-related service. Proposition 218 also requires voter approval for these fees, but specifically exempts water, sewer and refuse collection fees from the voter approval requirement.

In 2002, a California court determined that stormwater systems are not sewer systems and that Proposition 218 means that a stormwater fee is invalid unless the voters approve it. SB 231 therefore seeks to allow a stormwater fee to be adopted without voter approval by specifying that the definition of "sewer" includes a stormwater system.

SB 231 aims to provide one potential tool that cities may utilize to fund costly stormwater programs. However, as cities rely on SB 231 to adopt dedicated stormwater fees, we anticipate future threatened litigation will resolve questions about the constitutionality of this new law.

For further information about SB 231 and stormwater funding and compliance, please contact Nick Ghirelli. For further information about Proposition 218 and local fees and charges, please contact Trisha Ortiz.

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PRACTICE AREAS

Municipal & Public Agency
Law

OF RELATED INTEREST

Construction & Public Works

Propositions 13, 218 & 26
(Public Finance)

Stormwater Discharge (NPDES
Permits)