

CALIFORNIA MUNICIPAL REVENUE SOURCES HANDBOOK

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THE CALIFORNIA MUNICIPAL REVENUE
SOURCES HANDBOOK

2014

Edition

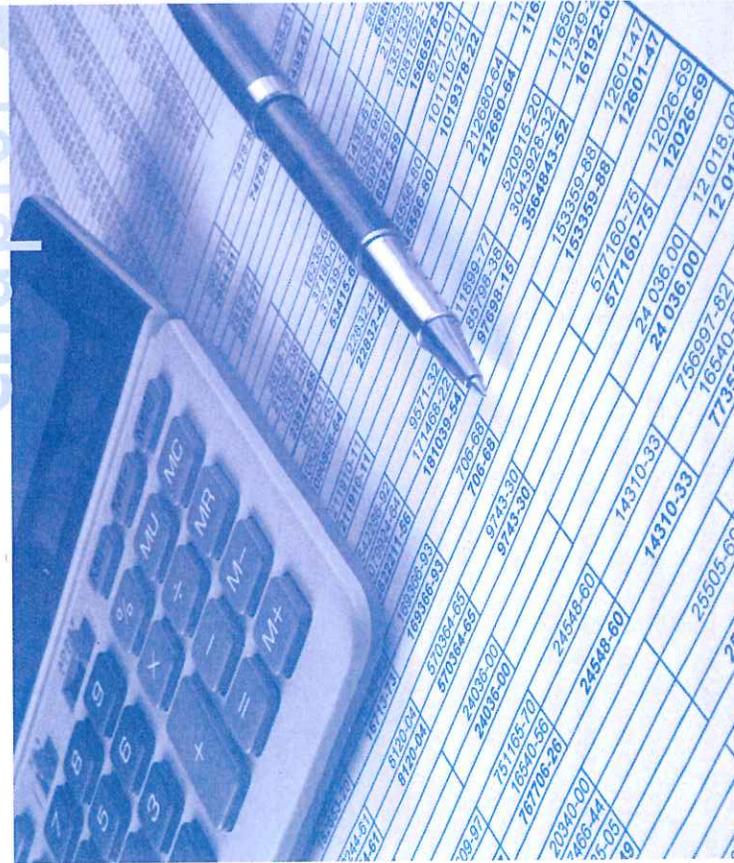
Michael Coleman



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TAXES

Chapter 2



A tax is a monetary imposition by a government on persons or property for the purpose of raising revenue to support the purposes of the government.¹ In contrast to an assessment or a fee, a tax need not be levied in proportion to specific benefit to a person or property. Fees or charges will be considered taxes to the extent they exceed the reasonable cost of the service, commodity or facility for which they are imposed.

California cities do not have an inherent power to tax. Charter cities are given the power to tax pursuant to Article XI, §5 of the California Constitution and may levy taxes for municipal purposes without specific authorization from the Legislature. As authorized in state statute, a general law city, with certain exceptions, may levy any tax that a charter city may levy.² State law may set certain limits and procedures and may exempt certain activities from taxes levied by general law cities. These laws apply to charter cities in matters that the courts have determined are of statewide concern.

"The nation should have a tax system that looks like someone designed it on purpose."

—WILLIAM SIMON

■ General and Special Taxes

The passage of Proposition 13 in 1978 created a distinction between “general” and “special” taxes. Proposition 218, in 1996, further defined and established procedures for general taxes.³

- A *general tax* is a tax imposed for general governmental purposes, the proceeds of which are deposited into the General Fund. A majority vote of the electorate (those voting on the measure) is required to impose, extend or increase any general tax.
 - An election on a general tax must be consolidated with a regularly scheduled general election of city council members, except in cases of emergency declared by a unanimous vote of the city council.⁴
 - Single-purpose special districts (special purpose districts) may not impose general taxes.

- A *special tax* is a tax that is collected and earmarked for a specific purpose and deposited either into a separate account or the General Fund. A two-thirds vote of the electorate is required to impose, extend or increase any special tax.

■ Proposition 26: Defining a Tax By What it is Not

California voters approved Proposition 26 in November 2010, placing new rules into the California Constitution stating that a government-imposed charge, levy or exaction of any kind is a tax unless it falls into one of seven express exceptions.

1. *A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.*

Specific Benefit Exception examples include fees for planning permits, restricted neighborhood parking permits, and entertainment and street closure permits.

2. *A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.*

Government Service or Product Exception examples include user fees for parks and recreation classes, utilities (other than those covered under #7), public records copying fees, DUI emergency response fees, emergency medical and ambulance transport service fees.

	General Tax	Special Tax
Use of Revenues	<ul style="list-style-type: none"> ■ Unrestricted 	<ul style="list-style-type: none"> ■ Specific purpose
Governing Body Approval	<ul style="list-style-type: none"> ■ General law cities: two-thirds ■ Charter cities: majority ■ Counties: two-thirds ■ Transactions and Use Taxes: two-thirds See section 2.03 of this chapter. 	<ul style="list-style-type: none"> ■ Majority
Voter Approval	<ul style="list-style-type: none"> ■ Majority 	<ul style="list-style-type: none"> ■ Two-thirds
Other Rules	<ul style="list-style-type: none"> ■ A general tax election must be consolidated with a regularly scheduled general election of members of the governing body, unless an emergency vote declared by unanimous vote (among those present) of the governing body. 	<ul style="list-style-type: none"> ■ Special tax funds must be deposited in a separate account. The taxing agency must publish an annual report including: <ol style="list-style-type: none"> 1) the tax rate; 2) the amounts of revenues collected and expended and 3) the status of any project funded by the special tax.⁵

7. Assessments and property related fees imposed in accordance with the provisions of Article XIII D. (Proposition 218).

Proposition 218 Exception examples include assessments on real property for special benefit conferred, fees imposed upon a parcel or a person as an incident of property ownership, and fees for a property related service such as many retail water and sewer fees.

■ When is a Tax Imposed, Increased or Extended?

Under Proposition 218, no local government may impose, extend or increase any general tax until such tax is submitted to the electorate and approved.⁶

A tax is "imposed" when the local tax ordinance is adopted, and each time a tax is collected.⁷ "Extend" means a decision by an agency to extend the stated effective period for the tax or fee or charge, including amendment or removal of a sunset provision or expiration date.⁸

A tax is "increased" when an agency either 1) increases the rate used to calculate the tax; or 2) revises the methodology by which the tax is calculated if that revision results in an increased amount being levied on any person or parcel.⁹ A tax is not "increased" if 1) it is imposed at a rate no higher than the maximum rate previously approved, or 2) it is adjusted in accordance with a schedule of adjustments, including a clearly defined formula for inflation that was adopted prior to November 6, 1996.¹⁰ However, a tax which is calculated by using a percentage is "increased" when it is adjusted for inflation even if the voters approve the tax.¹¹

3. A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

Permits and Inspections Exception examples include health and safety permits, building licenses, police background checks, pet licenses, bicycle licenses and permits for regulated commercial activities (such as massage establishments, card rooms, taxicabs and tow-truck operators).

For exceptions 1 through 3, the fee imposed must not exceed the agency's reasonable costs.

4. A charge imposed for entrance to or use of local government property or the purchase rental or lease of local government property.

Local Government Property Exception examples include facility room rentals; equipment rentals; park, museum and zoo entrance fees, golf greens fees, on and off-street parking, and tolls.

5. A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government as a result of a violation of law, including late payment fees, fees imposed under administrative citation ordinances, parking violations, etc.

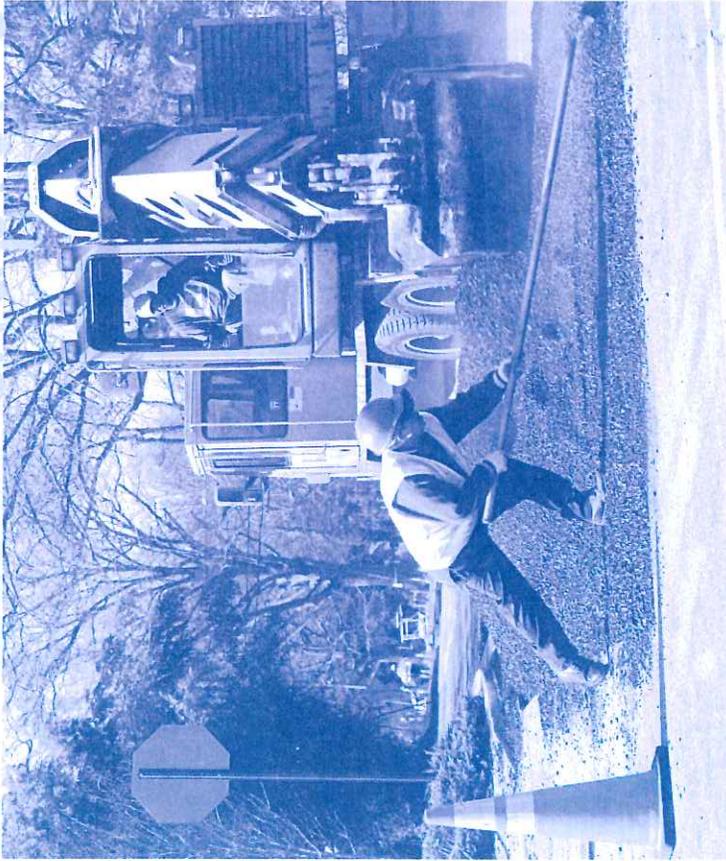
Penalty for Illegal Activity Exception examples include parking fines, code enforcement fees and penalties, late payment fees, interest charges and other charges for violation of the law.

6. A charge imposed as a condition of property development.

Property Development Exception examples planning fees, building permit fees, construction and grading permits, development impact fees, fees imposed by California Environmental Quality Act mitigation requirements, and Quimby Act and park mitigation fees.

BENEFIT ASSESSMENTS

Chapter 3



Benefit assessments (also called "special assessments") are levied to pay for specifically identified public improvements or services that specially benefit the properties or businesses subject to the assessment.

A number of state laws permit the imposition of assessments for various purposes. General law cities may impose an assessment under one or more of these laws, following the procedures and limitations set forth in that law. Charter cities may also use state laws, but often choose to enact and proceed under their own assessment laws. Local assessment laws adopted by charter cities are typically drafted to incorporate one or more of the statewide laws, but may include revisions to the incorporated law streamlining procedures or permitting the financing of additional improvements or services.¹ Generally, such local laws must comply with California Constitution Article XVI, Section 19.

Chapter 3: Benefit Assessments

■ Assessments Versus Fees and Taxes

The key distinction between a benefit assessment and other types of revenue measures, such as fees and taxes, is that an assessment is based upon the special benefit that a property (or business) will derive from the improvement or service provided by the assessment.

Benefit assessments may also be distinguished from "nuisance abatement assessments," which are legally a form of regulatory fee (see Chapter Four, section 4.04) or other "assessments," which are in the nature of a fine or penalty (see Chapter 5, section 5.05).

■ Proposition 218

Proposition 218 (California Constitution Article XIII D), passed by the voters on November 5, 1996, affects most special assessments imposed since the passage of the act that are imposed on real property, in five principal ways:

1. Subjects assessments to repeal or reduction by initiative unless they have been bonded, triggering the protection of the federal Constitutional contract clause;

2. Establishes procedural requirements for the levy of assessments, including the requirement for majority property owner approval by a mail ballot process;

3. Requires the local agency to separate the general benefits from the special benefits conferred on a parcel, and to only assess for the special benefit;

4. Forbids the use of assessments on private property to fund the portion of the special benefit of a project or program which accrues to public agency property and can be argued to limit the general rule of intergovernmental tax immunity to allow assessment of government property; and

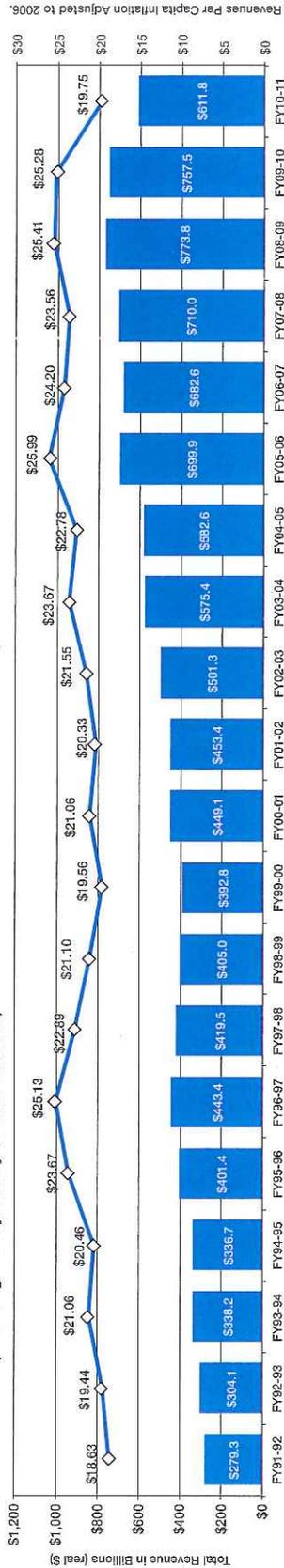
5. Shifts the burden of proof in legal actions to contest the validity of an assessment to the assessing government.

■ Use of Initiatives to Reduce or Repeal Assessments

Proposition 218 provides that the initiative power may be used to reduce or repeal any local tax, assessment, fee or charge.²

Benefit Assessment Revenues

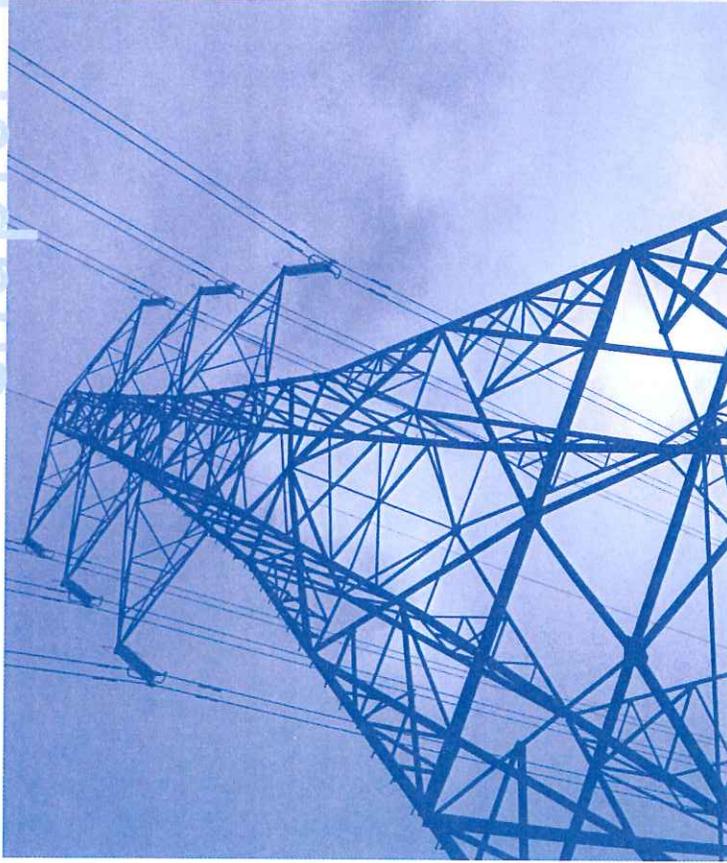
California Cities (excluding the city/county of San Francisco)



Sources: CaliforniaCityFinance.com; computations from data from California State Controller (revenues), California State Dept of Finance (population, CPI)

FEES, CHARGES AND RATES

Chapter 4



Fees comprise a broad category of locally imposed revenues generally intended to recover all or a portion of a government's costs for providing a service or access to public property, or for mitigating the impacts of the fee payer's activities on the community. A fee may not exceed the estimated reasonable cost of providing the service or facility for which the fee is charged. Fees are sometimes called charges and are often called rates in the context of utility services. The term "fee" is used in this chapter.

The list of fees is extensive, and includes: user fees, such as park admission fees or fees charged for recreation programs; enterprise service fees, such as water, sewer or refuse collection fees; regulatory fees, such as plan check fees, inspection fees, permit application fees and other fees imposed on regulated activities; and mitigation fees, such as those imposed to off set impacts resulting from new development. Fees in one category may have attributes of fees in another. Certain fees imposed for a property-related service are subject to specific procedural and substantive requirements of Proposition 218.

A fee may not exceed the estimated reasonable cost of providing the service or facility for which the fee is charged.

Thanks to Betsy Strauss, Dan Hentschke and Michael Colantuono for their contributions to this chapter.

Generally speaking there are two broad categories of fees and charges: user fees and regulatory fees. User fees are charged for the use of a public service or program such as fees charged for recreation programs or public document retrieval. User fees for property-related services are referred to as property-related fees.

Regulatory fees are charged either to pay for the cost of a government program which regulates the activities of the fee payers or to mitigate the impact of the fee payer's activities on the community. A development impact fee is a common regulatory fee which imposes a charge to defray the cost of the development on a public facility such as streets or schools.

All user fees and regulatory fees are subject to the same limitation: The amount of the fee may not exceed the "estimated reasonable cost" of the providing the service, facility or program or (as in the case of regulatory fees) of mitigating the impact of the fee payer's activity. Estimated reasonable cost may include reasonable administrative expenses and overhead. Revenues collected in excess of the service cost may be categorized as "taxes," which require voter approval.¹

Regulatory fees must be reasonable, fair and equitable in nature and proportionately representative of the costs incurred by the regulatory agency for administrative enforcement and related adjudicatory activities.

The distinction between fees and taxes is frequently blurred, especially in the media and common discussion, but generally fees are imposed in return for a benefit conferred or privilege granted, while taxes are simply intended to collect revenue (see Chapter 2 for taxes). The legal distinction is important, however, because adoption procedures and other rules vary depending on the proper classification of the revenue. Fees must also be distinguished from assessments, which are levied strictly based on "special benefit" conferred, and fines, which are collected because of a violation of a law (see Chapter Three for assessments).

Although they are often called "fees," charges for the use of public facilities such as for off-street parking, marina berth rates and facility rental are paid for the use of public property and are more similar to rent. Fees for the use of public property are considered rent, and are generally set at the discretion of the public agency and are not subject to the requirement that revenues not exceed the costs of service. See Chapter 5, Section 5.06.

■ Proposition 26: Defining a Tax By What it is Not

Proposition 26, approved by the voters on November 2, 2010, provides further distinctions among these categories of revenues. The constitutional measure stipulates that a government-imposed charge, levy or exaction of any kind is a tax unless it falls into one of seven express exceptions.

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Specific Benefit Exception examples include fees for planning permits, restricted neighborhood parking permits, and entertainment and street closure permits.

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Fees enacted prior to November 3, 2010 are unaffected by Proposition 26 until they are extended or increased. That is, even if a fee enacted prior to November 3, 2010 does not fit within any of the tax exceptions under Proposition 26, it may nonetheless be valid provided that the legislation authorizing it is not amended so as to extend or increase the fee.

Laws governing fees vary based on the particular type of fee imposed. It is extremely important to discuss any new fee, or increase or adjustment of any existing fee with the city attorney or agency counsel. In this manual, the categories of revenues are organized as follows:

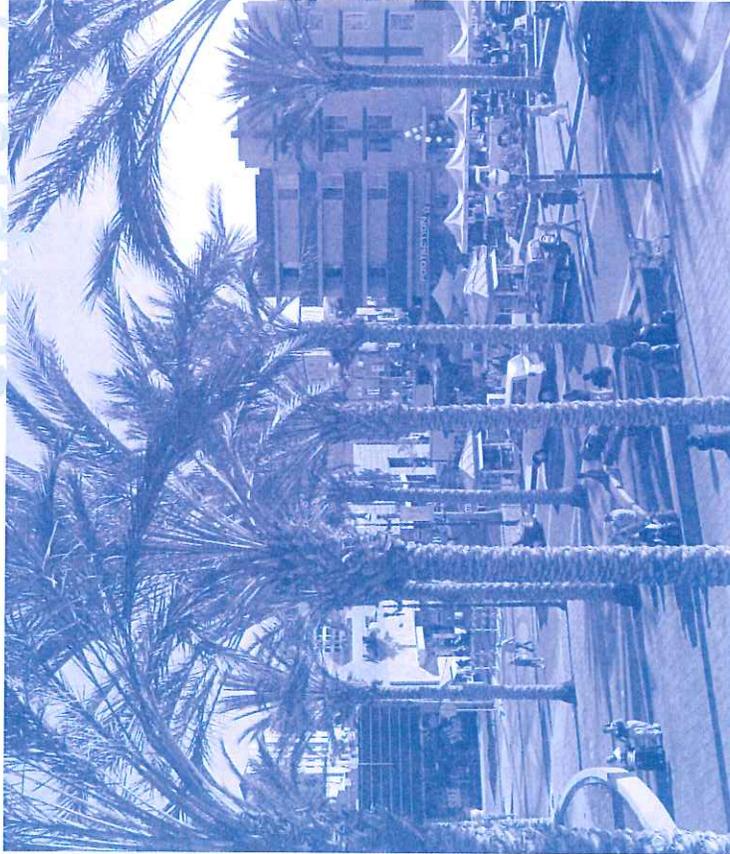
Revenue Category		Reference
Fees	User Fees	Utility Rates Section 4.01 Service and Program Fees Section 4.01 Property-Related Fees Section 4.02 Development Impact Fees Section 4.03 Regulatory Program Fees Section 4.04
	Regulatory Fees	Franchises Chapter 5, Section 5.01-5.03 Facility Use Fees Chapter 5, Section 5.06
	Rents	Chapter 5, Section 5.01-5.03 Chapter 5, Section 5.06
	Fines, Penalties	Chapter 5, Section 5.05
Assessments	Chapter 3	
Taxes	Chapter 2	

For More Information:

- The California Municipal Law Handbook, League of California Cities, 2007.
- Proposition 218 Implementation Guide, League of California Cities, 2007.
- Proposition 26 Implementation Guide, League of California Cities, 2011, www.cacities.org/Prop26Guide.

FINANCING CAPITAL ASSETS

Chapter 9



Local governments may finance acquisition or construction of various projects and capital assets through the issuance and sale of municipal securities. Securities are sold and the proceeds are used for the cost of such acquisition or construction. Debt financing is needed when the cost of a capital improvement project exceeds tax and fee revenues available during the construction period. It also allows the public entity to spread the cost of the project over time and manage cash flows.

This chapter discusses the most popular types of financing techniques used for municipal facilities and programs.

Thanks to Pamela L. Becker for her contributions to this chapter.

Chapter 9: Financing Capital Assets

Features of Capital Financing Methods

	Security	Permissible Projects
General Obligation Bonds	"Full faith and credit" of issuer: as valorem property taxes paid by owners of taxable property in the jurisdiction.	Acquisition and improvement of public property and facilities.
Special Assessment Bonds	Assessments on property/fees limited to special benefit to the property that is charged.	Acquisition of property and improvement of infrastructure and additional facilities of benefit to the property that is charged.
Special Tax (e.g. Mello-Roos) Bonds	Special tax on property within community facilities district (CFD).	Acquisition and improvement of public property and facilities.
Tax Allocation (Tax Increment) Bonds	Property tax increment from within designated project areas. May also include other revenues.	Acquisition and improvement of public property and facilities within project areas according to redevelopment plan.
Certificates of Participation	Lease or installment sale agreement paid from General Fund (lease) or special/enterprise (installment sale) revenues.	Unrestricted.
Revenue Bonds	Service charges and other fees paid by users of project or services.	Acquisition and improvement of revenue-producing public property and facilities.
Marks-Roos JPA Bonds	Taxes, user fees, lease or installment payments, from local agencies to JPA.	Acquisition and improvement of public property, facilities and/or equipment.

Chapter 9: Financing Capital Assets

Legal Authority	Approval Procedure	Credit Concerns
California Constitution Article XVI, §18 and California Constitution Article IIIA §1(b).	Issuer resolution and ordinance; two-thirds voter approval.	Assessed valuation trends; overall economic health of community; concentration of property ownership.
Improvement Bond Acts of 1911 and 1915 and others. California Constitution Article XIII §4 (Proposition 218).	Engineers report; weighted majority protest procedure.	Diversity of ownership; value-to-lien ratios.
Mello-Roos Community Facilities District Act of 1982 (Government Code §§53311, et seq.).	two-thirds voter approval or — where there are fewer than 12 registered voters — by landowners in proportion to land owned in the CFD.	Value-to-lien ratios; absorption rate; infrastructure phasing and needs; diversity of ownership.
California Constitution Article XVI §16, Health and Safety Code §§33640, 33204.	Resolutions of redevelopment agency governing board and city (or county in an unincorporated area).	Tax increment collections, general economic conditions, relationship of base year assessed valuation to total assessed valuation.
Government Code §§37350, 37351 (cities); Government Code §§23004, 25351 (counties) allowing lease and disposal of property.	Resolution of governing board approving lease or installment agreement.	Not backed by full faith and credit of issuer; limited ability to repossess and relet; risk of reduction in pledged revenues; abatement.
Revenue Bond Act of 1941 (Gov Code §54300).	Issuer resolution and in some instances public vote.	User charges and rate levels; concentration of rate-payers; competition.
Marks-Roos Local Bond Pooling Act of 1985 (Government Code §6584).	Resolutions of governing boards of JPA and participating entities.	"weak links" in JPA; sources of repayment.

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