

## MCSO Supplement to the Agenda

The following Items came to the Board on Wednesday, March 3, 2021  
as a possible addition to the agenda.

Discussion and consideration to become a signatory for ACWA's  
(Association of California Water Agencies) coalition letter supporting SB  
323.

 **OUTREACH ALERT**

LEGISLATIVE/RATES  
March 2, 2021

## Members Urged to Join Coalition Supporting ACWA-Sponsored SB 323; Bill Set for Hearing on March 11

ACWA's coalition in support of SB 323, which would improve financial stability for public agencies by creating a statute of limitations for legal challenges to water and sewer service rates, now includes more than 40 organizations. ACWA is urging member agencies that have not yet joined to do so before the bill is heard at the Senate Governance and Finance Committee hearing on March 11.

SB 323 is sponsored by ACWA and authored by Senator Anna Caballero (D-Salinas). It would provide public agency water and sewer service rates the same protections already afforded to fees and charges that fund other essential government services. It would also give ACWA member agencies more financial certainty by helping to prevent costly and time-consuming litigation challenging rates and charges years after they have been adopted and collected, while still ensuring that adopted rates and charges comply with Proposition 218 and other existing laws.

A [fact sheet](#) is available for more information about the bill.

### Requested Action

ACWA is urging member agencies take the following actions immediately.

- 1. Sign on to ACWA's [coalition letter](#)** supporting SB 323 by contacting Legislative Advocate Kristopher Anderson at [krisa@acwa.com](mailto:krisa@acwa.com). The deadline to be included on the coalition letter before it is submitted to the Senate Governance and Finance Committee is **March 5 at noon**.
- 2. Contact Your Senator(s) and Assembly Member(s) by phone** to support SB 323. A [fact sheet](#) is available to assist you in these conversations. Legislators' [contact information](#) can be found on the California Legislature's website.
- 3. Be included in ACWA's testimony.** ACWA plans to read a list of organizations in support of the bill at the March 11 hearing. If you cannot meet the deadline to sign on to the coalition letter, but would like to register your support, please email ACWA Legislative Advocate Kristopher Anderson at [krisa@acwa.com](mailto:krisa@acwa.com) before March 11.

# OUTREACH ALERT

## Background

Because water and sewer utilities' budgets are largely funded by revenue collected through service rates, reliable long-term financial planning is paramount to providing these essential government services.


While public agencies require financial stability to meet these demands, existing law does not prevent lawsuits that seek refunds, or seek to invalidate existing rate structures, years after rates have been adopted and collected. Delayed lawsuits can threaten an agency's ability to repay debt guaranteed by revenue from rates, derail ongoing infrastructure projects, and generally undermine an agency's ability to maintain stable budgets necessary to operate effectively.

In recent years, water and sewer agencies have been increasingly dragged into court with Proposition 218 challenges to their rate structures. This issue culminated in February of 2020 when a class action lawsuit was filed against 81 water suppliers in California, challenging their ability to charge ratepayers for the costs of providing critical, life-saving fire protection infrastructure. For some of the defendant agencies, the challenged rates were adopted five years before the lawsuit was filed.

SB 323 recognizes the need to minimize fiscal uncertainty for public agencies by authorizing an agency or interested person to bring a validation action in a superior court to determine the validity of a fee or charge for water and sewer service. If a validation action is not brought within 120 days, parties would be barred from challenging the validity of the fee or charge. The bill is intended to strike a balance between the interests of ratepayers and the need for public agencies to maintain reliable sources of revenue.

## Questions

For questions about SB 323 (Caballero), please contact ACWA Legislative Advocate [Kristopher Anderson](#) at (916) 441-4545.



**SB 323  
(CABALLERO):  
WATER / SEWER  
RATES**  
ACWA SPONSORED BILL

### SUMMARY

This proposal would authorize a local agency or interested person to bring a validation action in a superior court to determine the validity of a fee or charge for water and sewer service. The proposal would require an interested party bring an action within 120 days after the local agency adopts the fee or charge.

### EXISTING LAW

Existing law (Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the California Code of Civil Procedure) allows a public agency or any interested person to file a judicial action in a local superior court to determine the validity of a public agency action. Lawsuits brought by the public entity are called "validation actions," and lawsuits brought by the public are called "reverse validation actions." Validation actions are often available for matters related to public financing, such as issuance of public debt.

Validation actions provide agencies with an expedited, conclusive, and binding determination about the validity of the agency's action. By obtaining a speedy resolution, the agency can act in reliance on the action, without the threat of lawsuits years later.

Parties typically have 60 days after the agency takes the action to file a validation action with a court. Once a party files a validation action, a judge must determine whether the agency action complies with existing law, and is thus, valid. If the public agency

or interested person does not bring an action within the 60-day timeframe, the agency's action cannot be challenged in court.

Existing law already provides statutes of limitations for a variety of local taxes, assessments, fees, and charges. After the statute of limitations has expired, ratepayers can no longer challenge the rates.

For example, in 2000, recognizing the need for municipal utilities to maintain stable funding, the California State Legislature enacted a 120-day statute of limitations for challenges to municipal electric rates or charges. Government Code section 66022 provides a 120-day statute of limitations for water and sewer connection fees and capacity charges. This section also extends the statute of limitations to various development impact fees.

### PROBLEM

Water and sewer utility budgets are largely funded by revenue collected through service rates. These rates provide the funding necessary to supply safe drinking water, upgrade and improve aging infrastructure, and operate effectively. While public agencies require financial stability to meet these demands, existing law does not prevent lawsuits that seek refunds, or seek to invalidate existing rate structures, years after rates have been adopted and collected. Delayed lawsuits can threaten an agency's ability to repay debt guaranteed by revenue from rates, derail ongoing



infrastructure projects, and generally undermine an agency's ability to maintain stable budgets necessary to operate effectively.

In recent years, water and sewer agencies have been increasingly dragged into court with Proposition 218 challenges to their rate structures. This issue culminated in February of 2020 when a class action lawsuit was filed against 81 water suppliers in California, challenging their ability to charge ratepayers for the costs of providing critical, life-saving water supplies for fire hydrants. For some of the defendant agencies, the challenged rates were adopted up to five years before the lawsuit was filed.

Proposition 218, which governs property-related water, wastewater, and sewer rates, requires agencies to follow extensive noticing and public hearing requirements prior to adopting new rate structures. The law provides extensive opportunities for ratepayer participation in this process, and they can seek legal recourse if they believe the rates do not comply with existing law. Public agencies are committed to maintaining and protecting public participation in the rate-setting process. At the same time, providing essential government services like water and sewer at affordable prices requires the ability for public agencies to engage in reliable long-term financial planning.

The impacts of COVID-19, including the necessary disruptions to in-person work and Governor Newsom's executive order prohibiting water shutoffs, have

made water districts' revenue and financial planning more unpredictable. Now is an important time to make existing legal protections consistent to improve predictability for utility providers.

## SOLUTION

This proposal adds consistency to existing law by authorizing a local agency or interested person to bring a validation action in a superior court to determine the validity of a fee or charge for water and sewer service. If a validation action is not brought within 120 days, parties would be barred from challenging the validity of the fee or charge.

Existing law recognizes the need to minimize fiscal uncertainty for public agencies providing essential services by establishing a reasonable period of time beyond which agencies will not face exposure to lawsuits challenging the validity of various local taxes, assessments, fees, and charges. However, existing law provides a piecemeal statutory landscape, where a statute of limitations is afforded to fees and charges that fund some essential government services but not others.

By allowing customers to bring challenges within a reasonable – but limited – period of time, this proposal would balance the interests of ratepayers with those of public water and sewer agencies, and thereby end the piecemeal character of existing law.



## CONTACT

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