



ASSESSING THE BENEFITS OF BENEFIT ASSESSMENTS:

A Guide to
Benefit Assessments
in California

THIRD EDITION

September 2011

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LOIS WOLK
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September 23, 2011

Dear Friend,


Benefit assessments are older than the United States of America. First used in the 13th Century to finance vital public works, benefit assessments allows property owners to pay for parks, roads, sidewalks, bridges, and street lights that directly benefit their property. Property owners can also use benefit assessments to pay for fire protection or fighting pests.

While benefit assessments pay for many local public works projects and programs, few Californians may know very much about this important financing tool.

When the Committee first published April Manatt's 1995 guide, we received many orders because people wanted to learn more about benefit assessments. Voters later approved Proposition 218 (1996). In 2004, Mufaddal Ezzy produced a second edition of this guide, which reflected Proposition 218's impact on assessments. Because voters' approval of Proposition 26 (2010) and recent court cases have changed the landscape for benefit assessments, I've asked Samantha Lui, a Senate Fellow in the Senate Governance and Finance Committee, to research and revise this report.

I hope you will find Samantha's work on this third edition helpful as you pursue a better understanding of how property owners and local officials can use benefit assessments to improve California communities.

Sincerely,



LOIS WOLK
Chair

**ASSESSING THE BENEFITS
OF
BENEFIT ASSESSMENTS**

A Guide to Benefit Assessments in California, 3rd Edition

SEPTEMBER 2011

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INTRODUCTION

Local governments finance projects and services through various funding mechanisms, like benefit assessments. Assessments are a unique financing tool, but few people may be familiar with them. If you've picked up this guide, you may be asking:

- What is a benefit assessment?
- Who can use benefit assessments?
- Where can benefit assessments be used?
- Why does California have benefit assessments?
- What's my role in benefit assessments?
- What are some examples of benefit assessments?

This guide answers questions and refers you to more information. After reading the publication, we hope you will gain an understanding of benefit assessment financing -- an important tool that lets owners decide to pay for local improvements and services they want to have.

WHAT IS A BENEFIT ASSESSMENT?

The California Constitution defines a **benefit assessment** as "any levy or charge upon real property by an agency for a special benefit conferred upon the real property" (Article XIII D §2 [b]).

Local officials and property owners can use benefit assessments to pay for public improvements and services that benefit property. Rather than billing everyone, benefit assessments *localize* the costs of public improvements and activities, so only property owners who benefit from the property improvement pay.

If a benefit assessment is a charge on property owners for a special benefit on property, what is a special benefit? The California Constitution defines a **special benefit** as "a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute 'special benefit.'" (Article XIII D §2 [i]).

Why do local governments use benefit assessments?

Have you ever noticed that local government services and facilities may benefit some people more than others, even when everyone may pay the same amount of taxes? A benefit assessment is a financing mechanism that distributes costs in proportion to benefits. Benefit assessments ensure that the defined group of property owners who use and benefit from the public services, pay for them.

For example, let's take a look at local parks. If one person's home is a block away from the park and another person's home is 5 miles away, which property would more likely benefit from the local park? Clearly, the house that is closer to the park benefits more than the home 5 miles away. As a result, the house closer to the park must pay a larger assessment than the home farther away.

In short, when a specific project or service benefits a defined group of property owners, it makes sense to match the cost of the benefit with owners who actually benefit from the service or project.

Overview of local government finance mechanisms

Where do benefit assessments fit in the spectrum of local government finance?

- A **benefit assessment** is an involuntary charge that property owners pay for a public improvement or service, which provides a special benefit to their property. The assessment amount is directly related to the amount of the benefit their properties receive. Benefit assessments can finance public projects like street improvements, streetlights, and public landscaping.
- A **fee** is a voluntary charge paid by individuals, businesses, and property owners to cover the costs of a service or facility they want. The amount of the fee cannot be more than the cost to provide the service. You may find yourself paying a fee when going to a local public swimming pool or when ordering a copy of your birth certificate.
- A **tax** is an involuntary charge paid by individuals, businesses, and property owners, regardless of the taxpayer's relative benefit. Taxes pay for governmental services that broadly benefit the public. Examples of taxes include local sales taxes and hotel taxes.

A BENEFIT ASSESSMENT IS NOT...

Now that we've reviewed what benefit assessments are, let's take a closer look at what benefit assessments are *not*.

Is a benefit assessment like a tax or a fee?

- **Benefit assessments are not taxes.**

Benefit assessments differ from taxes in three ways. First, benefit assessments are charges on property for activities or projects that directly benefit property. Local officials, on the other hand, can levy taxes with no clear or direct benefit to particular individuals or property.

Second, benefit assessments have different vote requirements than taxes. There are two types of taxes – general and special. Under the California Constitution, general taxes* require majority-voter approval; special taxes* need 2/3 voter-approval. In contrast, benefit assessments need approval on a weighted majority* of the affected property owners' ballots.

Third, the parcel's benefit assessment amount is proportionate to the benefit received by the parcel. By contrast, *ad valorem** property taxes reflect a parcel's assessed value, and parcel taxes are typically levied as a flat rate per parcel.

▪ **Benefit assessments are not fees.**

There are different types of fees, or "rates" as they may be called in utility services.

- **User fees** pay for the cost of a specific service or program, such as when individuals and businesses use government services to replace lost library cards or obtain copies of birth certificates.
- **Property-related fees** impose charges on a parcel or person as an incident of property ownership, like providing residential water or sewer service.
- Local governments may also impose **exactions and mitigation fees** – for example, park land dedication under the Quimby Act – as a condition for property development to compensate for new development impacts.

Proposition 26 (2010) redefined some fees as taxes. However, property owners can't avoid paying benefit assessments by declining to use the resulting facilities and services.

In short, benefit assessments differ from taxes and fees because:

- 1) Benefit assessments directly relate to a property's special benefits; and
- 2) The assessment's cost is related to the perceived benefit of the service on a property, not the actual cost of the service that benefits the individual.

Terms denoted with an *, please see Appendix A for definitions.

COMPARING ASSESSMENTS, FEES, AND TAXES

TYPE	WHO PAYS?	DEFINED BENEFIT?	VOTE APPROVAL
Assessments	Specific group of property owners	Direct	Weighted ballot of property owners
Fees & charges	Individuals, companies, property owners	Direct	<ul style="list-style-type: none"> • Governing body • Hearing and protest • Hearing, protest and election
<ul style="list-style-type: none"> • Not property related 			
<ul style="list-style-type: none"> • Property (water, sewer, refuse) • Property (not water, sewer, refuse) 			
Taxes	Individuals, companies, property owners	None	<ul style="list-style-type: none"> • Majority-voter approval • 2/3 voter-approval
<ul style="list-style-type: none"> • General • Special 			

Is a benefit assessment district like a city, county, or special district?

Do benefit assessment districts have governing powers like cities, counties, or special districts?

- **Benefit assessment districts are not cities or counties.**

Cities and counties are autonomous local governments with elected governing boards and corporate and regulatory powers. Cities and counties use various financing tools, including benefit assessments, to provide services, facilities, and programs.

Benefit assessment districts differ from cities and counties because assessment districts are not autonomous local governments with regulatory or corporate powers. Benefit assessment districts are financing tools.

- **Benefit assessment districts are not special districts.**

Like cities and counties, special districts are autonomous local governments with governing boards that have corporate powers. Special districts deliver limited services such as water, sewers, and parks.

Although benefit assessment districts may fund similar services, they are not autonomous governments nor do they run programs. Benefit assessments are financing tools that fund projects and services that property owners want.

▪ **Benefit assessment districts are not “Mello-Roos” districts.**

Cities, counties, special districts, and school districts can form Mello-Roos Act* Community Facilities Districts to levy special taxes for community improvements and services. Mello-Roos special taxes usually finance new land developments. Some examples of Mello-Roos spending are schools, freeway interchanges, library services, and recreation programs.

Where Mello-Roos taxpayers may not necessarily benefit from the activities funded with Mello-Roos taxes, property owners in benefit assessment districts pay for improvements and services that directly benefit their property.

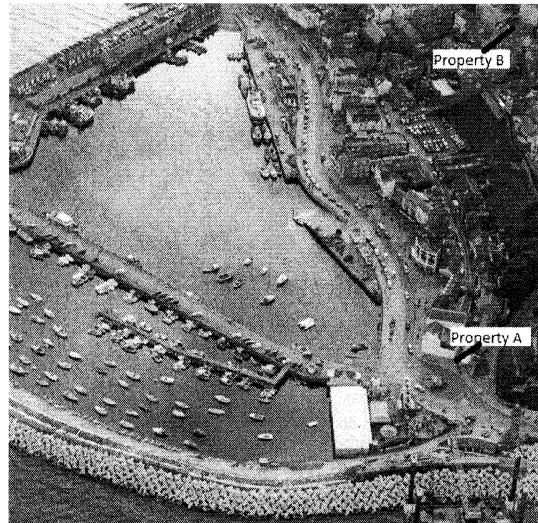
To recap, benefit assessment districts are *financing tools* that local officials use to provide services or facilities for specific parcels. Benefit assessment districts are not autonomous government agencies that run programs.

HISTORY OF BENEFIT ASSESSMENTS IN CALIFORNIA

In the early 1900s, benefit assessments paid for projects limited to small geographic regions (like a street or neighborhood) and where improvements were adjacent to the benefitting property. Later, the Legislature authorized assessments for more distant improvements, such as parks, water channels, and street lighting. In the late 20th Century, the Legislature authorized business improvement districts to pay for programs that help business owners' property.

But, where did the idea of benefit assessments come from, and why did California start using them?

The landmark study, *Windfalls for Wipeouts* by Hagman and Misczynski, traced benefit assessments to a local 13th Century ordinance in England that used assessments to pay for repairs to seawalls. Residents paid for the seawall repair in proportion to the amount of land protected by the seawall.



*Scarborough South Bay, U.K. Sea Wall.
Property A benefits more from sea wall protection than Property B.*

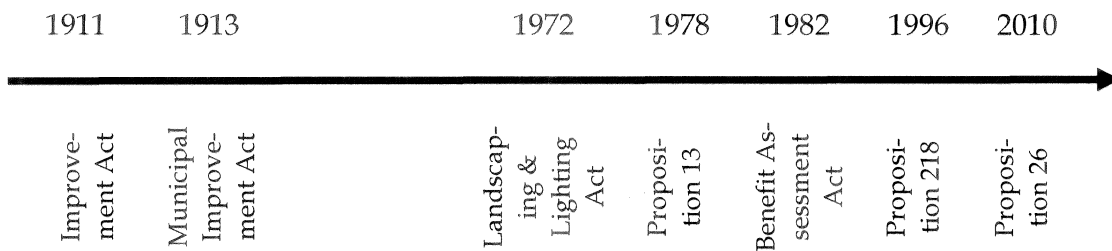
In 1691, the tradition of levying benefit assessments reached America: New York City assessments paid for paving streets and building a drainage system.

The *Windfalls* study found that America's assessment usage peaked in the early 1900s. Cities, such as Oakland and Los Angeles, relied on assessment proceeds for about 20% of their total revenues. However, during the Great Depression, public reliance on assessments declined, as landowners defaulted on their property assessments.

Moving towards Proposition 218

Fast forward to the 1960s and 1970s: California's population was booming and property taxes were rising. In 1978, California voters approved Proposition 13*, which cut property tax revenues by 57%. Yet, the demand for local services continued. In response to decreased revenues and a capped property tax revenue stream, local officials had three options: cut costs, shift costs, or raise revenues. Officials used all these strategies. They also turned to benefit assessments and other revenue sources to pay for local services.

After Proposition 13 (1978), the Legislature authorized special districts to impose benefit assessment capabilities, permitting them to finance flood control, drainage, and water services.



The Legislature expanded the Landscaping and Lighting Act of 1972 to permit the installation and maintenance of parks; the Legislature also expanded the Municipal Improvement Act of 1913 to permit local agencies to maintain, repair, and improve various facilities. After the Benefit Assessment Act of 1982, assessments declined because the Act created a uniform procedure for local officials to authorize such types of public systems. By the early 1990s, the Legislature extended assessment powers and authorized assessments for wine-grape pest control, habitat maintenance, and expanded the authority for business improvement districts.

Although benefit assessments are a familiar feature of the local fiscal landscape, they can be controversial. For example, taxpayer advocates may argue that it is inappropriate for special districts to use benefit assessments to finance fire protection, mosquito abatement, and open space preservation because those services benefit society at large, rather than specially benefiting property owners. From local officials' perspective, property tax revenues aren't enough to pay for services the public wants,

so benefit assessments are a reasonable option. Taxpayer advocates' perceived that local governments circumvented Proposition 13's voter approval requirement by calling taxes "assessments" and "fees." While taxpayer advocates, landowners, local officials, and the state may disagree on how to use benefit assessments, the Legislature ultimately exercises discretion as to what benefit assessments can fund and provide.

By the 1990s, friction between taxpayer advocates and local governments intensified. In 1996, California voters approved Proposition 218, the "Right to Vote on Taxes Act," which required local voter approval of local taxes and tightened the rules for benefit assessments. Taxpayer advocates argue that Proposition 218 gave the public a louder voice in debates about local revenues, through stricter public procedures and voter approval. Critics argued that Proposition 218's weighted-ballot* procedure for the approval of assessments allows larger property owners to silence the voice of smaller property owners.

Where are we now?

Since Proposition 218's passage, court decisions transformed the landscape of benefit assessments: shifted the burden of proof to local agencies to defend proposed benefit assessments, authorized more independent judicial review, and increased scrutiny on the engineer's report.

Before 1996, local officials worked with engineers to determine if a benefit assessment was reasonable and fair. In *Silicon Valley Taxpayers' Association, Inc. v. Santa Clara County Open Space Authority* (2008), the court ruled that Proposition 218 shifted the burden of proof to the local government agency to prove that an assessment is levied properly. Before 1996, if a property owner challenged how a benefit assessment was levied or the engineer report's validity, it was the challenger's responsibility to show that the assessment was unfair or inaccurate. After *Silicon Valley*, local government agencies must work harder to justify and to defend proposed benefit assessments. For example, in *Beutz v. County of Riverside* (2006), although the property owner did not question proportionality or special benefits in his assessment appeal, the local agency still had to address these issues in defending the assessment.

It's all about proportions.

Proposition 218 required that assessment amounts be "proportional" to the special benefit each parcel receives. But, what does that mean?

Assessment amounts must reflect the benefit conferred to the property, not the cost of the property enhancement or a flat rate across all properties.

In the *Silicon Valley* decision, the court rule that a proposed assessment failed to meet Prop. 218's proportionality test because:

- It was calculated using a projected annual budget, rather than an estimation of actual project costs.
- It was levied as a flat rate on all properties, assuming that all properties would benefit equally, regardless of their location.

Another important result from the *Silicon Valley* case is that courts established their authority to “exercise independent judgment in determining whether an assessment complies.” This means that regardless of locals’ decisions about benefit assessments, courts now have the ability to override local decisions. Also, because the courts heavily scrutinize the engineer’s report, local officials must be more careful to prepare a rigorous report.

Gray Areas

By restricting local governments’ ability to levy benefit assessments, Proposition 218 created legal ambiguity for local agencies: how should local agencies differentiate general from special benefits? How can agencies determine proportional assessment costs? This legal ambiguity is highlighted by the court’s decision in *Town of Tiburon v. Bonander* (2010), which invalidated a supplemental assessment to underground utility lines because (a) the Town’s apportionment method was based on cost considerations rather than proportionality of benefits conferred to property, and (b) properties in the Supplemental District were required to pay for special benefits on parcels not in the district.

In June 2011, further shadows were cast over local governments’ ability to use assessments. In *Concerned Citizens for Responsible Government v. West Point Fire Protection District*, the assessment – to double the District’s fire protection budget and finance a full-time senior firefighter on duty year-round -- failed for two reasons. First, the District’s goal was deemed a general -- not special -- benefit. Second, the court declared that even if fire suppression was considered a special benefit, the assessment failed the proportionality requirement. The engineer found the cost to reach the goal then worked backwards to allocate a parcel’s assessment costs. Despite increased service demands and stunted tax revenues, court decisions and propositions may have weakened local governments’ ability to use benefit assessments.

WHO CAN ASSESS?

The California Constitution and state statutes control which agencies can levy benefit assessments. These states laws also explain what assessments can pay for and the formal procedures that public officials must follow. Local governments can select from over 30 separate benefit assessment laws to finance facilities and services. These laws outline:

- Which agencies can levy assessments.
- How officials determine who benefits.
- What assessment the assessments can pay for.
- What limits exist on the duration or renewal of the assessment.

General law* cities, counties, school districts, and special districts can’t levy benefit assessments without a state law that allows them to do so. However, the California

Constitution allows the state's 120 charter cities* to levy benefit assessments without specific authority from state law. In all cases, local agencies must follow the Constitutional limits, including Proposition 218 (1996).

For more detailed information about commonly used benefit assessment laws, see Appendix B.

CREATING DISTRICTS AND LEVYING ASSESSMENTS

How are benefit assessment districts formed, and how are assessments levied on private property? All assessments require these basic steps:

- **Petition or resolution.** Some assessment acts require property owners to petition local officials to form benefit assessment districts; others permit local officials to initiate a district with a resolution of their governing body; some laws allow both methods. Property owners can also circulate petitions until they get the required number of signatures. If local officials can independently adopt a resolution, they must act in an open meeting.
- **Engineer's report.** After property owners petition local officials, or after local officials have adopted their resolution, an engineer must study the proposed improvements, estimate costs, diagram the proposed district boundaries, and calculate a fair allocation of the benefit assessments among the benefited parcels in direct proportion to the amount of special benefit* each receives. For example, a house located closer to a new park might have a higher assessment than another house several blocks away, because the house closer to the park may get more benefit from the new park. After completing the report, the engineer files it with the local agency.
- **Apportioning benefits.** Proposition 218 requires agencies to use the professional engineer's report to estimate the amount of special benefit landowners would receive from the project or service, as well as the amount of "general benefit," which is defined as an overall benefit to society at large. This step is needed because Proposition 218 allows local agencies to recoup from assessments only the proportionate share of the value of the special benefit. That is, if special benefits represent 50% of total benefits, local agencies may use the assessments to recoup half of the project or service's costs. Local agencies must use other revenues to pay for any remaining costs. Local agencies must then set individual assessment charges, so that no property owner pays more than their proportional share of the special benefit that flows from a project or service.
- **Public meeting.** After local officials are satisfied with the engineer's report, they hold a public meeting to hear property owners' comments on the proposal. Lo-

cal officials must notify the affected property owners of the meeting at least 10 days in advance. At the meeting, anyone can talk about the nature, costs, and components of the proposed benefit assessment. Local officials may hold multiple public meetings. The meeting is for public comment only; local officials cannot adopt the assessment plan until a later public hearing.

- **Mailed ballots.** Local officials must mail a ballot to all affected property owners to vote for or protest against the proposed assessment. A notice containing the date, time, place of the public hearing when ballots will be counted, and specific information about the proposed benefit assessment will also be included the mail. The purpose of the benefit assessment, the amount that would be charged to the owner's parcel, how that amount was calculated, and the payment duration will also be enclosed. The ballot must carry the agency's address or include a self-addressed envelope, marked "Official Ballot Enclosed", so that property owners can return their ballots by mail.
- **Public hearing.** After local officials hold their public meetings, they must call a public hearing where the benefit assessment plan can be approved or rejected. Property owners must be notified of the hearing at least 45 days in advance. At the hearing, an impartial person must tabulate the ballots in public view. Unlike ballots cast in elections, ballots cast in assessment proceedings are not secret.

Does elections law apply to benefit assessments?

Benefit assessments follow different procedures than traditional elections. Unlike traditional elections, benefit assessment votes are not secret. This is necessary because ballots must be weighted by the amount each affected property owner will pay under the proposed assessment. Assessment ballots must be counted in public to assure that information is made available equally to proponents and opponents of the assessment.

Ballots are weighted by the amount each property owner must pay if the assessment passes, so those who pay more get a larger share of the vote. In other words, the ballots are weighted in proportion to the amount of benefit each property receives from the benefit assessment. This means that a property owner whose parcel receives twice the benefit of another parcel would pay twice the assessment. The property owner paying twice as much would also have their ballot count twice as much.

If the weighted majority of property owners who submit ballots is against the assessment, then local officials must abandon the assessment. However, if the assessment passes, local officials can still modify the plan in response to public comment. However, if the assessment plan that landowners voted on is substantially modified, then a new election may be required. The local agency cannot increase an assessment after the property owners approve it except as provided in the original assessment proposal.

- **Levying assessments.** After local officials adopt the assessment plan, they levy the benefit assessment. Most assessment acts allow the agency to begin work on the facilities and services immediately. Assessments appear on a property owner's annual property tax bill. Some assessment plans call for benefit assessments to increase occasionally to keep up with the cost-of-living or as new facilities and services become available. If the plan calls for the benefit assessments to increase according to a formula or range, property owners' bills can increase automatically. However, if local officials want larger increases, they must go through the same procedures: another public meeting, another election, and another public hearing.

BENEFIT ASSESSMENTS AT WORK

Here are some examples of how California communities use benefit assessments to pay for local improvements and activities.

Since 1973, the City of Simi Valley (Ventura County) has levied, under the Landscaping and Lighting Act of 1972, semi-annual landscape maintenance assessments that range from \$19 to \$634 per parcel, depending on the size of the landscape area to be maintained. The assessments pay for landscape maintenance, turf maintenance, irrigation system repairs, and utilities for properties within the public right-of-way adjacent to residential developments.

In 1984, the City of Moorpark (Ventura County) established a Landscaping and Lighting Maintenance District to fund street light and landscaping improvements. The City annually considers whether or not to renew the District's levies. For the 2011-12 year, landscaping assessments for residential property range from \$3.30 to \$470.86. For commercial property, assessments range from \$17.24 to \$170.43. Lighting assessments are \$20.84.

Since 1992, the Orangevale Recreation and Park District (Sacramento County) has instituted assessments under the Landscaping and Lighting Act of 1972. The \$42 annual assessment on residential parcels funds a community center, sports fields' rehabilitations, and neighborhood park developments.

In 1993, the City of Monterey Park (Los Angeles County) created the Citywide Maintenance District, under the Landscaping and Lighting Act of 1972. Assessments finance street tree maintenance, median landscaping, and streetlights. Annual assessments range from \$20.48 for vacant lots, \$34.82 for each multi-family residential unit, \$40.97 per single family residential parcel, and \$297.44 per acre for commercial parcels.

In 2010, 34,200 property owners within boundaries of the Sutter Butte Flood Control Agency approved assessments to finance levee repairs to increase public safety and reduce flood risk. Each of the levied assessments varies per property, but a typical, residential assessment is around \$190. The anticipated sunset of the assessment is 2043.

In 2010, the property owners in Delta Vector Control District (Cities of Visalia, Exeter, Woodlake, Dinuba, Farmerville, and Elderwood) approved a ten year benefit assessment, which will fund laboratory construction and vector-borne disease sample research. Assessments range from 5¢ per acre for agricultural parcels, \$1.30 for vacant parcels, \$3.25 per ¼-acre for commercial parcels, and \$6.50 for residential parcels.

BENEFIT ASSESSMENT REVENUES

After the passage of Proposition 13 (1978), local officials’ interest in benefit assessment financing has been characterized as a “feeding frenzy” by some and a “financial footnote” by others. However, it’s difficult to say if the use of benefit assessment districts has increased since 1978 because the detailed data prior to 1978 is unavailable.

What’s clear is that benefit assessment revenues, as a percentage of a local agency’s total budget, may be relatively large in some cases and quite small in others.

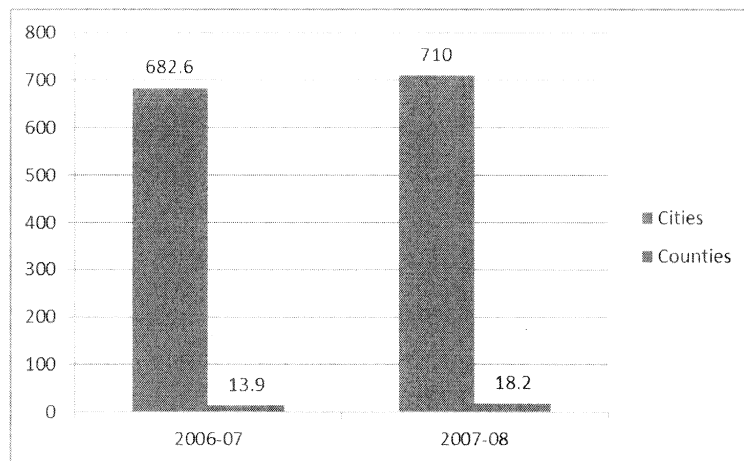


Figure 1: Benefit assessments’ contribution to Cities and Counties Total Revenue (Amounts in millions of dollars). Source: State Controller’s Cities Annual Report and Counties Annual Report

For example, in fiscal year 2007-2008, the counties that levied benefit assessments received only 0.04% of their total revenue from benefit assessment, which translates to nearly \$18,191,000. For cities, benefit assessments generated nearly \$710 million in functional revenues.

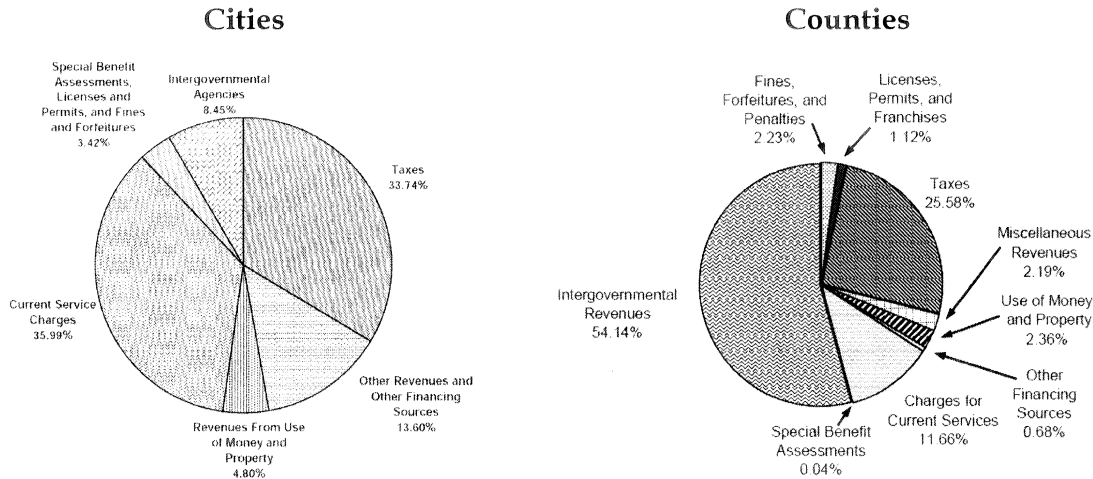


Figure 2 Cities and Counties Total Revenue by Source (2007-08).
 (Excluding the City and County of San Francisco, transfers in).
 Source: 2007-08 State Controller's Cities Annual Report and Counties Annual Report.

Most local governments, however, still receive the majority of their funds from taxes, fees, and intergovernmental subventions. Benefit assessments function as an important, flexible tool that local agencies can use for financing local amenities.

PROS AND CONS OF BENEFIT ASSESSMENTS

Local officials, landowners, developers, and taxpayer groups have different perspectives about the usefulness and equity of benefit assessments.

Advantages

- **Benefit assessments link costs to benefits.**
 Benefit assessments let local officials distinguish between beneficiaries and non-beneficiaries of government activities. Assessments let local officials charge the property owners who benefit from improvements and services. By billing the direct beneficiaries of public activities, benefit assessments help local agencies operate more like businesses.

- **Benefit assessments empower property owners.**
 Under some benefit assessment law, property owners can initiate benefit assessment proposals. When property owners want neighborhood improvements – a park, more street lights, better paved roads – they can petition their local officials to form an assessment district to pay for the costs. If local officials try to impose assessments for unpopular improvements, property owners can protest the benefit assessment. Because property owners control the benefit assessments on their property, they control the amenities that they're required to pay for.

- **Benefit assessments foster local control of resources.**
Local officials can't control every aspect of their budgets. Federal and state government subventions are a big part of local governments' collective revenues. Because the California Constitution limits property tax rates and local officials must get voter approval for new taxes, local governments don't have many funding choices when communities want more public services. Benefit assessments give local officials a tool to finance the local amenities that their constituents want.

Disadvantages

- **Benefit assessments replace property tax revenues.**
Before Proposition 13 (1978), local governments set their own property tax rates. Proposition 13 capped the property tax rate; in turn, local government revenues were also capped. Local officials must make up the difference in their revenue stream by either reducing spending or by increasing other revenues sources. So, some local agencies turn to benefit assessments to pay for the facilities and services previously paid for by property tax revenues. Arguably, some property owners and taxpayer advocates believe that benefit assessments pay for projects and services that their property taxes should support.
- **Benefit assessments make debt more expensive.**
Local officials can repay bonds with benefit assessments. However, bonds that are backed by benefit assessments can be more expensive than other types of bonds because they involve the risk that property values may fall or that many property owners may fail to pay assessments. Financial markets' cautious approach to assessment-backed bonds also drives up their cost. Unlike other bonds, assessment bonds are usually unrated and uninsured, resulting in higher interest rates.
- **Benefit assessment elections may be unfair.**
Proposition 218 requires the weighted majority of property owners who submit ballots to approve benefit assessments. Each property owner has a specific weight attached to their ballot, depending upon the amount of benefit the property will receive. If a large developer owns massive tracts of land, the developer's weighted ballot could silence the voice of smaller property owners. In other words, larger property owners can dominate the assessment approval process with ballots that literally count more than the votes of smaller property owners.

FREQUENTLY ASKED QUESTIONS

Now that you know the basics about benefit assessments, you may have some more specific questions.

1. How do I know if I live in a benefit assessment district?

If you live in a benefit assessment district, you can tell by looking at your county property tax bill. Benefit assessments appear on a property tax bill along with the name of the agency that levies them and the agency's contact number.

2. If I am looking to purchase property, will a benefit assessment district be disclosed?

Yes. If the property is less than four units, the property seller or agent must provide the prospective buyer a disclosure form, called a Preliminary Title Report. The Preliminary Title Report lists parcel ownership history, defects, existing liens on the property, and possible encumbrances.

3. Who forms a benefit assessment district?

Some benefit assessment laws require property owners to initiate assessments by petitioning their local officials; other acts let local agencies form assessment districts directly by holding a public hearing and adopting a resolution. Property owners must approve benefit assessment proposals in a mailed ballot protest process.

4. Am I notified when a new benefit assessment is proposed?

Yes. California's Ralph M. Brown Act requires all local agencies to hold open meetings and provide special notice of new and increased benefit assessments. The Brown Act requires local agencies to notify the affected property owners 45 days before the public hearing where the benefit assessment plan will be voted on, and to hold an additional public *meeting* before the public *hearing*. Proposition 218 also requires the public notice be mailed to property owners. Notices must include the time and place of the public meeting and public hearing, the proposed amount of assessments, the activities or improvements that will be funded, and how to get more information. The notice must also describe the protest procedure and include a ballot to allow the property owner to support or oppose the proposal.

5. Do I get to approve all benefit assessments?

If you own affected property, yes. The California Constitution requires a mailed ballot protest process, limited to the owners of the affected parcels. Your ballot will be weighted to reflect your parcel's financial obligation.

6. How can I protest a proposed benefit assessment district?

You may attend the public meeting held before the election and voice your concerns orally or in writing.

If you own property that a local agency wants to assess, you may protest the assessment. To do so, you must complete the ballot received in the mail and return it either by mail or by delivering it to the agency before the ballots are counted at the public hearing.

For some reason, if you didn't receive a ballot, or misplaced it, you may obtain a ballot from the agency. Should you change your mind about approving or protesting a district's formation, you may withdraw your ballot and substitute a new one until the close of the public hearing.

7. Can I stop an existing assessment?

Because Proposition 218 requires each assessment to be approved by property owners who will have to pay, they are sometimes hard to undo. However, property owners can take their case to the general electorate by collecting sufficient signatures on a petition to qualify for an initiative to repeal or reduce the assessment, unless bonded debt backed by an assessment is outstanding. Property owners must be prepared to accept, however, that if their initiative passes and no alternative source of revenue have been identified, they may lose the service financed by the assessment.

8. Can I dissolve a benefit assessment district?

In some cases, you can. Some of the assessment acts permit local officials to dissolve assessment districts. For example, to dissolve a Landscaping and Lighting District, a local agency must adopt a resolution of intention to dissolve the district and hold a protest hearing. Barring a majority protest, local officials may dissolve the district. Upon dissolution, the local officials transfer any remaining revenues to their general fund. But under the Parking and Business Improvement Area Law, the local officials must refund remaining assessments to the business owners who paid them. If assessments have been pledged to pay off bonds, then the assessments must continue until the bonds are paid for. Again, because different laws use different procedures, make sure to check the law that local officials originally used to establish the district.

9. What happens if I don't pay my benefit assessment?

If property owners don't pay their assessments on time, they face penalties and interest charges. In most cases, an unpaid benefit assessment becomes a lien against property. A lien allows the local agency to recover these charges when the property is sold. Some assessment acts also permit local agencies to foreclose on properties with delinquent payments, meaning that the non-paying property owner could lose his or her property just as is the case if property taxes are not paid.

10. Why are benefit assessments invisible to the public?

Benefit assessments often escape wide public attention because they are a financing tool whose functions are usually narrow and because property owners often times

overlook them on their property tax bills. However, when local agencies levy benefit assessments, they must conform to democratic safeguards, such as the California Constitution (Proposition 218), the Ralph M. Brown Act, and the California Public Records Act.

For example, a group of property owners wants more street lights, and an assessment district is created to provide the lamps. When the street lamps are drilled in place, you can visibly outline the boundaries of the benefit district. However, if the service conferred to a property is unseen, like undergrounding wires in the Town of Tiburon, you may not be able to physically see the benefit assessment district's boundaries.

11. What voter-approved propositions relate to benefit assessments?

There is not a simple answer, but notably, when California's voters approved Proposition 218, which was touted a safeguard against haphazard taxes, and added Article XIII C and Article XIII D to the California Constitution, voters made it more difficult for local governments to impose taxes and fees – benefit assessments, included – on property owners. These Articles outline constitutional limits on how an agency can create a benefit assessment district and how property owners can halt or call for the creation of them.

12. What are some emerging issues with benefit assessments?

The future of benefit assessments remains a major point of contention between local governments, courts, and taxpayer advocates. First, Proposition 218 and the case of *Silicon Valley Taxpayer Association v. Santa Clara Open Space* raise the question of proportionality of the benefit. Should benefit assessments be used to acquire and preserve open space? Does open space acquisition confer the necessary "special benefit" upon real property for the use of benefit assessment financing to be appropriate? Or, do all residents of an area – property owners and renters – equally benefit from open space?

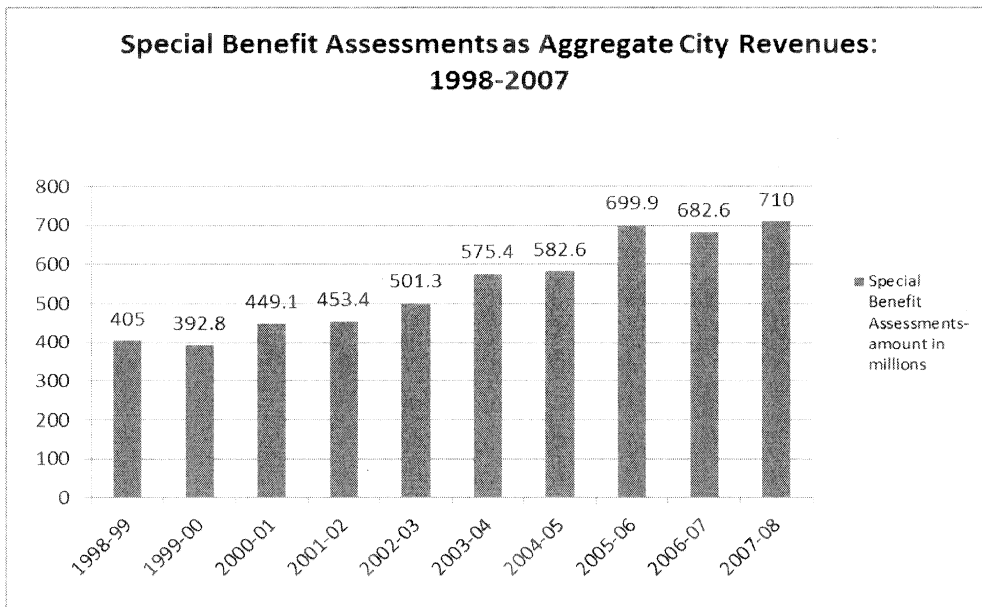
Another issue with benefit assessments is how local government agencies and engineer consulting firms will grapple with distinguishing a "special benefit" from a "general benefit." Although the California Constitution Article XIIC cites "cost" and "benefit" in the same line, it is up to local agencies, engineers, and judges to interpret that law and see if cost and benefit are connected or not. If cost and benefit are intertwined, how else can engineers determine benefit, if not by cost?

Also, local agencies may question if benefit assessments are worth pursuing, given the increased number of challenges to benefit assessments, greater burden on agencies to defend their benefit assessments, and more independent judicial review.

Proposition 218 also has the unique feature of requiring government to pay assessments on its property. Historically, the state government has not been required to

pay property taxes, assessments, and other property related charges because the money paid by the government towards this sort of charge would simply come back to the government. Currently, no general implementation process exists for state participation in local assessment proceedings, or for paying the assessments required by Proposition 218.

13. Are benefit assessments still being used heavily?



Source: 2007-08 State Controller's Cities Annual Report.

Opinions vary on whether benefit assessments are being used less frequently as a result of recent court decisions. Since 1998, cities' benefit assessments have relatively increased over time. Local governments rely on specialized engineering firms to construct rigorous reports that can be upheld in court.

14. Where can I get more information on benefit assessments?

Although there isn't a central office that keeps track of which local agencies use what types of assessments for what purposes, the State Controller collects financial information on local agencies and produces annual financial reports for each type of agency – cities, counties, special districts, and school districts.

You can order a copy of these reports by calling the State Controller's office at (916) 445-2636 or find the reports online at www.sco.ca.gov.

APPENDIX A: KEY TERMS

Ad valorem property tax: A tax amount based on the value of real estate.

Charter city: A city organized under a charter adopted by a majority vote according to the provisions of the California Constitution. The charter operates as the city's constitution. Charter cities have more discretion to raise revenues.

Exaction: A contribution or payment required as an authorized precondition for receiving a development permit.

General law city: Contrary to a charter city, a general law city must follow the general law of the state in all situations.

General tax: A tax used for general purposes, which requires a majority-voter approval.

Mello-Roos Act: A Mello-Roos district is a financing mechanism for local public facilities and services. Mello-Roos taxes are special taxes, which require 2/3-voter approval, or landowner-approved if fewer than 12 voters live in the district.

Parcel tax: A non-ad valorem tax on parcels of property. It can be imposed as either a flat per-parcel rate, or a rate based on a parcel size or use. Also, it can be either a general or special tax, but always requires a 2/3-vote.

Proposition 13 (1978): The "People's Initiative to Limit Property Taxation" amended the California Constitution and added Article XIII A. It limits the property tax rate to 1%. Voters must approve special taxes, and property reassessments by county assessors are limited.

Proposition 218 (1996): The initiative amended the California Constitution and added Article XIII C and XIII D. Proposition 218 significantly changed local government finance by requiring local agencies to let affected property owners protest any proposed assessment before it could be levied.

Special district: A type of local government agency that delivers specific public services within defined boundaries. Special districts localize the costs and benefits of services and allow local residents to obtain the services they want.

Special tax: A tax used for a specific purpose, which requires 2/3-voter approval.

Subvention: A form of financial assistance from one level of government to another public agency.

Weighted majority (or weighted ballot procedure): A procedure in which ballots are weighted by the amount each property owner pays, with those paying more getting a larger share of the vote. Ballots are weighted in proportion to the amount of benefit each property receives from the benefit assessment. This means that a property owner that receives twice the benefit of another property owner would pay

double the assessment amount. The property owner paying twice as much has their ballot count twice as much.

APPENDIX B: ASSESSMENT LAWS IN CALIFORNIA

Different cities and counties have used a variety of assessment acts. Below is a list of California's commonly used benefit assessment laws. While Proposition 218 outlines the benefit assessment approval procedures, the California Legislature exercises discretion on how, or which, governments can use benefit assessments.

Assessment Acts

- **Benefit Assessment Act of 1982** (Government Code §54703 et seq.). This act lets cities, counties, and special districts finance a variety of improvements.
- **Community Rehabilitation District Law of 1985** (Government Code §53370 et seq.). Cities and counties can fund the renovation and repair (but not the maintenance) of an existing structure.
- **Fire Suppression assessments** (Government Code §50078 et seq.). Cities, counties, and special districts can charge assessments to purchase and maintain fire-fighting equipment and to pay related salaries.
- **Geologic Hazard Abatement District assessments** (Public Resources Code §26500 et seq.). Cities and counties can assess property to prevent, mitigate, and abate geologic hazards such as landslides and bluff failures by acquiring property, preparing reports, and performing structural repairs.
- **Habitat Maintenance Districts** (Government Code §50060 et seq.). Cities and counties can levy assessments for long-term natural habitat maintenance in accordance with plans approved by the State Department of Fish and Game.
- **Improvement Act of 1911** (Streets and Highways Code §5000 et seq.). The 1911 Act allows local officials to fund transportation systems, street paving, grading, sidewalks, parks, recreation areas, sewers, drainage systems, fire protection, flood control systems, water systems, and "other necessary improvements."
- **Improvement Bond Act of 1915** (Streets and Highways Code §8500 et seq.). The 1915 Act does not authorize assessments. Instead, it lets cities, counties, and "public" districts that use other assessment acts issue assessment bonds and bond anticipation notes.

- **Landscaping and Lighting Act of 1972** (Streets and Highways Code §22500 et seq.). Cities, counties, school districts, and special districts can levy assessments for parks, landscaping, and maintenance.
- **Multifamily Improvement District Law** (Streets and Highways Code §36700 et seq.). Multifamily improvement districts can finance specific activities and improvements, like landscape maintenance and sidewalk construction.
- **Municipal Improvement Act of 1913** (Streets and Highways Code §10000 et seq.). The 1913 Act lets cities, counties, and special districts levy benefit assessments for everything included in the 1911 Act, plus water works, power facilities, and public transit facilities.
- **Municipal Lighting Maintenance District Act of 1927** (Streets and Highways Code §18600 et seq.). This act allows cities and counties to levy assessments to maintain and operate (but not install) street lights.
- **Open Space Maintenance Act** (Government Code §50575 et seq.). Cities and counties can assess land to maintain, improve, and protect open spaces by removing fire hazards, planting trees and shrubs, and acquiring fire prevention equipment.
- **Park and Playground Act of 1909** (Government Code §38000 et seq.). This act lets cities pay for public parks, urban open space land, playgrounds, and library facilities.
- **Parking and Business Improvement Area Law of 1989** (Streets and Highways Code §36500 et seq.). This act lets cities and counties fund parking facilities, public decorations, and the promotion of public events and business activities.
- **Parking District Law of 1951** (Streets and Highways Code §35100 et seq.). This act lets cities install and maintain parking meters, purchase land, and issue bonds.
- **Pedestrian Mall Law of 1960** (Streets and Highways Code §11000 et seq.). This act lets cities and counties establish pedestrian malls.
- **Property and Business Improvement District Law of 1994** (Streets and Highways Code §36600 et seq.). Allows cities and counties to assess businesses and property owners to promote tourism, build parking lots and fountains, provide security, and finance other facilities and services.
- **Street Lighting Act of 1919** (Streets and Highways Code §18000 et seq.). This act allows cities to assess for the operation and maintenance of streetlights.

- **Street Lighting Act of 1931** (Streets and Highways Code §18300 et seq.). Cities may levy assessments to maintain and operate (but not install) street lights.
- **Tree Planting Act of 1931** (Streets and Highways Code §22000 et seq.). This act lets cities levy frontage-based assessments to plant and maintain trees along city streets.
- **Vehicle Parking District Law of 1943** (Streets and Highways Code §31500 et seq.). Cities and counties may purchase land for parking structures, construct and maintain parking lots, and pay for related planning.

Assessment Authorizations

- **California Water District assessments** (Water Code §36410 et seq.). California water districts can form improvement districts to assess landowners and issue assessment-backed bonds.
- **Community Services District assessments** (Government Code §61712 et seq.). Community services districts can levy assessments for any facilities they are authorized to provide. District officials can use the Improvement Act of 1911, the Municipal Improvement Act of 1913, and the Improvement Bond Act of 1915.
- **Drainage District Improvement Act of 1919** (Water Code Appendix §31-12). Drainage districts can levy assessments to construct improvements.
- **Flood Control and Water Conservation District assessments** (Water Code Appendix §38-11). Flood control districts and flood control and water conservation districts can levy assessments for district projects.
- **Irrigation District assessments** (Water Code §25650 et seq.). Irrigation districts can assess land within the district for district purposes.
- **Monterey Peninsula Water Management District assessments** (Water Code Appendix §118-703). The Monterey Peninsula Water Management District can levy assessments to construct, maintain, and operate improvements and works.
- **Phylloxera Control District assessments** (Food and Agriculture Code §6250 et seq.). Wine grape Pest and Disease Control Districts can assess owners of wine grape acreage to pay for the costs of managing and controlling phylloxera and other wine grape pests, for information dissemination, and for charting the location of infestations.

- **Reclamation District assessments** (Water Code §51200 et seq.). County supervisors can appoint assessment commissioners to assess landowners to implement a reclamation plan. Supervisors can assess landowners directly for operation and maintenance costs.
- **Los Angeles County Metropolitan Transportation Authority assessments** (Public Utilities Code §33000 et seq.). The LACMTA can levy assessments for rail transit facilities and services.
- **Storm Water District assessments** (Water Code Appendix §13-11). Storm water districts can levy assessments for improvements.
- **Water agency assessments** (Includes Water Code Appendix §52-24, §54-12.5, §64-700). Various water agencies can assess land for their activities and improvements.
- **Water Conservation District assessments** (Water Code §75090). Water conservation districts can levy assessments for improvements.
- **Water Replenishment District assessments** (Water Code §60300, 71682). Water replenishment districts and municipal water districts can levy assessments to replenish groundwater.
- **Water Storage District assessments** (Water Code §46176). Water storage districts can levy assessments for district projects.

APPENDIX C: REFERENCES FOR QUESTIONS

The “Frequently Asked Questions” section, located on pages 12-15, tried to anticipate some of your questions. Here are the references.

Also, statutes are listed by code followed by a section number. For example, Government Code §34601 means that you can find the statute under Section 34601 in the Government Code. For the most updated version of the statutes, be sure to check the back of the codebook, which holds a “pocket” of recent amendments and deletions. Statutes can also be accessed online.

Question 1: How do I know if I live in a benefit assessment district?

County assessors report benefit assessments as a property lien to the California State Board of Equalization. Typically, a phone number will be at the bottom of the tax bill.

Question 2: If I am looking to purchase property, will a benefit assessment district be disclosed?

Civil Code §1102 requires that sellers and agenda must disclose all material facts in a Preliminary Title Report.

Question 3: Who forms a benefit assessment district?

California Constitution Article XIID, Section 4.

Question 4: Am I notified when a new benefit assessment is proposed?

Government Code §54950.5 et seq. is also known as the Ralph M. Brown Act.

Question 5: Do I get to vote on all benefit assessments?

California Constitution Article XIID, Section 4(d), Section 4(e), and Section 6.

Question 6: How can I protest a proposed benefit assessment district?

California Constitution Article XIID, Section 4(d), 4(e), 4(g), and Section 6.

Question 11: What propositions impacted benefit assessments?

California Constitution Article XIII A and Articles XIIC and XIID.

Question 13: Are benefit assessments still being used heavily?

State Controller’s Cities Annual Report, 2007-2008.

Question 14: Where can I get more information on benefit assessments?

The aggregate city revenue figures were provided from the State Controller’s Cities Annual Report 2007-2008. It can also be accessed on the web:

<http://www.sco.ca.gov/Files-ARD-Local/LocRep/Cities0708revised.pdf>

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