

AMENDED IN ASSEMBLY JANUARY 18, 2000

AMENDED IN ASSEMBLY JANUARY 3, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1674

**Introduced by Committee on Utilities and Commerce
(Wright (Chair), Pescetti (Vice Chair), Calderon,
Campbell, Frusetta, Mazzoni, Reyes, Vincent, and Wesson)**

March 15, 1999

An act to amend Sections 54999.2 and 54999.4 of, and to add Section 54999.35 to, the Government Code, and to amend ~~Section~~ *Sections 12702 and 16402* of, and to add Section 10004.5 to, the Public Utilities Code, relating to public utilities, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1674, as amended, Committee on Utilities and Commerce. Capital facilities fees: municipally owned utilities: public utility districts.

(1) Existing law authorizes the imposition of capital facilities fees for the construction or expansion of public utility facilities on public entities, as prescribed. Existing law authorizes a public agency to impose or increase an existing capital facilities fee in excess of a specified amount after a specified agreement has been reached between the 2 agencies. Fees in excess of a specified amount are refundable.

This bill would require (a) specified notification to affected school districts, county offices of education, community



college districts, California State universities, and the University of California prior to enacting or changing capital facilities fees, and (b) any judicial action or proceeding that seeks the refund of capital facilities fees imposed on or after April 1, 2000, to be commenced within 120 days of the effective date of an ordinance, resolution, or motion enacting or changing the capital facilities fee unless the specified notice requirements have not been followed. The bill would also revise provisions regarding the burden of producing evidence required of a public agency, as prescribed.

(2) Existing law authorizes a municipal corporation to acquire, own, operate, or lease any public utility, with powers as prescribed. Existing law also provides for the creation and operation of public utility districts, as prescribed, and generally allows a district to sue and be sued in all actions and proceedings, in all courts and tribunals of competent jurisdiction.

This bill would require any judicial action or proceeding, commencing on or after April 1, 2000, to attack, review, set aside, void, or annul an ordinance, resolution, or motion fixing or changing a rate or charge for a *an electric* commodity or *electric* service furnished by a municipal corporation or a public utility district to be commenced within 120 days of the effective date of that ordinance, resolution, or motion, *except as specified*.

(3) *The bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~ ^{2/3}. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 54999.2 of the Government
 2 Code is amended to read:
 3 54999.2. Any public agency providing public utility
 4 service on or after July 21, 1986, may continue to charge,
 5 or may increase, an existing capital facilities fee, or may
 6 impose a new capital facilities fee after that date, and any
 7 public agency receiving a public utility's service shall pay



1 those fees so imposed, except as provided in Sections
2 54999.3 and ~~5499.35~~ 54999.35.

3 SEC. 2. Section ~~5499.35~~ 54999.35 is added to the
4 Government Code, to read:

5 ~~5499.35.—~~

6 54999.35. (a) This section shall apply only to a
7 ~~municipal corporation or municipal utility district~~ *local*
8 *publicly owned electric utility* or other public agency
9 providing public electric utility service to a public
10 agency, as specified in subdivision (b). “*Local publicly*
11 *owned electric utility*”, as used in this section, means a
12 *municipality or municipal corporation operating as a*
13 *“public utility” furnishing electric commodity or electric*
14 *service as provided in Section 10001 of the Public Utilities*
15 *Code, a municipal utility district furnishing electric*
16 *commodity or electric service formed pursuant to*
17 *Division 6 (commencing with Section 11501) of the*
18 *Public Utilities Code, a public utility district furnishing*
19 *electric services formed pursuant to the Public Utility*
20 *District Act set forth in Division 7 (commencing with*
21 *Section 15501) of the Public Utilities Code, an irrigation*
22 *district furnishing electric services formed pursuant to*
23 *the Irrigation District Law set forth in Division 11*
24 *(commencing with Section 20500) of the Water Code, or*
25 *a joint powers authority that includes one or more of*
26 *these agencies that furnishes electric services over its own*
27 *or its member’s electric distribution system.*

28 (b) The imposition of a capital facilities fee for electric
29 utility service on any school district, county office of
30 education, community college district, the California
31 State University, the University of California, or state
32 agency by a public agency providing public utility service
33 shall be subject to all of the following:

34 (1) Where necessary to defray the actual construction
35 costs of that portion of a public utility facility actually
36 serving a public agency, any public agency providing
37 public utility service on or after July 21, 1986, may
38 continue to charge any capital facilities fee that was
39 imposed prior to that date on the public agency using the
40 public utility service and that was not protested or



1 challenged pursuant to law prior to January 1, 1987, or
2 increase that capital facility fee in an amount not to
3 exceed the percentage increase in the Implicit Price
4 Deflator for State and Local Government Purchases, as
5 determined by the Department of Finance, and any
6 public agency shall pay any capital facilities fees
7 authorized by this subdivision.

8 (2) Any public agency proposing to initially impose a
9 capital facilities fee or to increase an existing capital
10 facilities fee in excess of the amount set forth in paragraph
11 (1), may do so after agreement has been reached
12 between the two agencies through negotiations entered
13 into by both parties.

14 (3) Upon request of the affected public agency or
15 upon increase pursuant to paragraph (1), the public
16 agency imposing or increasing the fee shall identify the
17 amount of the capital facilities fee. The public agency
18 imposing or increasing the capital facilities fee has the
19 burden of producing evidence to establish all of the
20 following:

21 (A) The capital facilities fee is nondiscriminatory.

22 (B) The amount of the capital facilities fee does not
23 exceed the amount necessary to provide capital facilities
24 for which the fee is charged.

25 (C) The ~~increase in~~ capital facilities fee complies with
26 the requirements set forth in paragraph (1).

27 (4) A public agency proposing to enact or increase
28 capital facilities fees under this section shall notify by
29 registered mail any school district, county office of
30 education, community college district, California State
31 University, or University of California located within its
32 service area, not less than 30 days prior to the date of any
33 hearing set to consider an ordinance resolution, or motion
34 enacting or increasing a capital facilities fee. The notice
35 shall state the date, time, and place of any hearing. The
36 notice shall also state that the public agency proposes to
37 impose a new capital facilities fee or to increase an
38 existing capital facilities fee in an amount that either
39 complies with the requirements of paragraph (1) or in an



1 amount that exceeds capital facilities fees permissible
2 under paragraph (1).

3 (5) The notice described in paragraph (4) shall
4 designate an individual at the public agency who shall
5 make available, upon request, for inspection by any
6 school district, county office of education, community
7 college district, California State University, or University
8 of California located within its service area, the
9 information relied upon in setting the fee or increase,
10 including the methodology used to calculate and allocate
11 the capital expenditures giving rise to the fee or increase,
12 and an identification of the capital facilities that
13 contribute to the fee or increase, as well as any other
14 information relevant to determining whether or not the
15 fee or increase complies with the provisions of this
16 section. The affected school district, county office of
17 education, community college district, California State
18 University, or University of California shall designate the
19 individual who is to receive the notice, and the public
20 agency providing public utility service shall direct the
21 notice to that individual. If no specific individual is
22 designated, then the notice shall be addressed to the
23 affected facility itself.

24 (6) Any judicial action or proceeding to seek the
25 refund of any capital facilities fees imposed on or after
26 April 1, 2000, shall be commenced within 120 days of the
27 effective date of the ordinance, resolution, or motion
28 enacting or increasing the capital facilities fee. This
29 statute of limitations does not apply to any judicial action
30 or proceeding to seek the refund of a capital facilities fee
31 if the notice and disclosure requirements of this section
32 have not been followed.

33 SEC. 3. Section 54999.4 of the Government Code is
34 amended to read:

35 54999.4. Any capital facilities fees paid prior to the
36 effective date of this chapter and not protested or
37 challenged pursuant to law on or before January 1, 1987,
38 shall not be subject to refund, except for capital facilities
39 fees paid after July 21, 1986, by a public agency subject to
40 Section 54999.3 that are in excess of the maximum amount



1 authorized by Sections 54999.3 and 54999.35. Agreements
2 entered into prior to or after the effective date of this
3 chapter for the payment of capital facilities fees or
4 capacity charges shall be effective.

5 SEC. 4. Section 10004.5 is added to the Public Utilities
6 Code, to read:

7 10004.5. (a) Except as provided for in subdivision
8 (b), any judicial action or proceeding commenced on or
9 after April 1, 2000, against a municipal corporation or
10 other public agency created under this division that
11 provides electric utility service, to attack, review, set
12 aside, void, or annul an ordinance, resolution, or motion
13 fixing or changing a rate or charge for ~~a commodity or an~~
14 *electric commodity or an electric* service furnished by a
15 municipal corporation shall be commenced within 120
16 days of the effective date of that ordinance, resolution, or
17 motion.

18 (b) This section does not apply to ~~actions or~~
19 ~~proceedings filed under Section 54999.4.~~ *any judicial*
20 *action or proceeding filed pursuant to Chapter 13.7*
21 *(commencing with Section 54999) of Part 1 of Division 2*
22 *of Title 5 of the Government Code to protest or challenge*
23 *a rate or charge or to seek the refund of a capital facilities*
24 *fee if the notice and disclosure requirements of Section*
25 *54999.35 of the Government Code have not been*
26 *followed.*

27 SEC. 5. Section 12702 of the Public Utilities Code is
28 amended to read:

29 12702. (a) A district may sue and be sued, except as
30 otherwise provided by law, in all actions and proceedings,
31 in all courts and tribunals of competent jurisdiction.

32 (b) (1) *Except as specified in paragraph (2), any*
33 *judicial action or proceeding commenced on or after*
34 *April 1, 2000, against a municipal utility district or other*
35 *public agency created under this division that provides*
36 *electric utility service, to attack, review, set aside, void,*
37 *or annul an ordinance, resolution, or motion fixing or*
38 *changing a rate or charge for a commodity or service*
39 *furnished by a district shall be commenced within 120*



1 days of the effective date of that ordinance, resolution, or
2 motion.

3 (2) The statute of limitations specified in paragraph
4 (1) does not apply to any judicial action or proceeding
5 filed pursuant to Chapter 13.7 (commencing with Section
6 54999) of Part 1 of Division 2 of Title 5 of the Government
7 Code to protest or challenge a rate or charge or to seek
8 the refund of a capital facilities fee if the notice and
9 disclosure requirements of Section 54999.35 of the
10 Government Code have not been followed.

11 SEC. 6. Section 16402 of the Public Utilities Code is
12 amended to read:

13 16402. (a) Except as otherwise provided, a district
14 may sue and be sued in all actions and proceedings, in all
15 courts and tribunals of competent jurisdiction.

16 (b) Any judicial action or proceeding commenced on
17 or after April 1, 2000, against a municipal utility district or
18 other public agency created under this division that
19 provides electric utility service, to attack, review, set
20 aside, void, or annul an ordinance, resolution, or motion
21 fixing or changing a rate or charge for ~~a commodity or an~~
22 ~~electric commodity or an electric~~ service furnished by a
23 district shall be commenced within 120 days of the
24 effective date of that ordinance, resolution, or motion.

25 (c) This section does not apply to ~~actions or~~
26 ~~proceedings filed under Section 54999.4.~~ any judicial
27 action or proceeding filed pursuant to Chapter 13.7
28 (commencing with Section 54999) of Part 1 of Division 2
29 of Title 5 of the Government Code to protest or challenge
30 a rate or charge or to seek the refund of a capital facilities
31 fee if the notice and disclosure requirements of Section
32 54999.35 of the Government Code have not been
33 followed.

34 SEC. 7. This act is an urgency statute necessary for
35 the immediate preservation of the public peace, health,
36 or safety within the meaning of Article IV of the
37 Constitution and shall go into immediate effect. The facts
38 constituting the necessity are:



1 *In order to encourage competition and promote rate*
2 *stability in the evolving electric marketplace as soon as*
3 *possible, it is necessary that this act take immediate effect.*

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