

Assembly Bill No. 1674

Passed the Assembly July 6, 2000

Chief Clerk of the Assembly

Passed the Senate June 29, 2000

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2000, at _____ o'clock ____M.

Private Secretary of the Governor



CHAPTER _____

An act to amend Sections 54999.2 and 54999.4 of, and to add Section 54999.35 to, the Government Code, to amend Section 13076 of the Public Resources Code, to add Sections 10004.5, 12702.5, and 16402.5 to the Public Utilities Code, and to add Section 22651.5 to the Water Code, relating to public utilities, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1674, Committee on Utilities and Commerce. Capital facilities fees.

(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, the University of California, or a state agency prior to enacting or changing capital facilities fees, and (b) any judicial action or proceeding that protests or challenges a rate or charge that contains a capital facilities fee or that seeks the refund of capital facilities fees imposed on or after July 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 and disclosure requirements have not been followed. Under the bill, that 120-day procedural limitation would not apply if those notice and disclosure 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 authorizes a specified resort improvement district to produce, purchase, and sell electrical power. Existing law 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. Existing law authorizes the board of an irrigation district to sue, appear, and defend in the name of the district.

This bill would require any judicial action or proceeding to attack, review, set aside, void, or annul an ordinance, resolution, or motion fixing or changing a rate or charge for an electric commodity or electric service furnished by a district and adopted on or after July 1, 2000, 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.

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

SECTION 1. Section 54999.2 of the Government Code is amended to read:

54999.2. Any public agency providing public utility service on or after July 21, 1986, may continue to charge, or may increase, an existing capital facilities fee, or may impose a new capital facilities fee after that date, and any public agency receiving a public utility's service shall pay those fees so imposed, except as provided in Sections 54999.3 and 54999.35.

SEC. 2. Section 54999.35 is added to the Government Code, to read:

54999.35. (a) This section shall apply only to a local publicly owned electric utility or other public agency providing public electric utility service to a public agency in its service territory, as specified in subdivision (b). "Local publicly owned electric utility" as used in this section means all of the following:



(1) A municipality or municipal corporation operating as a “public utility” furnishing electric commodity or electric service as provided in Section 10001 of the Public Utilities Code.

(2) Any special district furnishing electric commodity or electric service, including, but not limited to, any of the following:

(A) A resort improvement district formed pursuant to Division 11 (commencing with Section 13000) of the Public Resources Code.

(B) A municipal utility district formed pursuant to Division 6 (commencing with Section 11501) of the Public Utilities Code.

(C) A public utility district formed pursuant to the Public Utility District Act set forth in Division 7 (commencing with Section 15501) of the Public Utilities Code.

(D) An irrigation district formed pursuant to the Irrigation District Law set forth in Division 11 (commencing with Section 20500) of the Water Code.

(3) A joint powers authority that includes one or more of these agencies that furnishes electric commodity or electric service over its own or its member’s electric distribution system.

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

(1) Where necessary to defray the actual construction costs of that portion of a public utility facility actually serving a public agency, any public agency providing public utility service on or after July 21, 1986, may continue to charge any capital facilities fee that was imposed prior to that date on the public agency using the public utility service and that was not protested or challenged pursuant to law prior to January 1, 1987, or increase that capital facility fee in an amount not to exceed the percentage increase in the Implicit Price



Deflator for State and Local Government Purchases, as determined by the Department of Finance, and any public agency shall pay any capital facilities fees authorized by this subdivision.

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

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

(A) The capital facilities fee is nondiscriminatory.

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

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

(4) A public agency proposing to enact or increase capital facilities fees under this section shall notify by certified mail any school district, county office of education, community college district, California State University, University of California, or state agency located within its service area that is an electric utility customer of the public agency, not less than 30 days prior to the date of any hearing set to consider an ordinance resolution, or motion enacting or increasing a capital facilities fee. The notice shall state the date, time, and place of any hearing. The notice shall also state that the public agency proposes to impose a new capital facilities fee or to increase an existing capital facilities fee in an amount that either complies with the requirements of paragraph (1) or in an amount that exceeds capital facilities fees permissible under paragraph (1).



(5) The notice described in paragraph (4) shall designate an individual at the public agency who shall make available, upon request, for inspection by any school district, county office of education, community college district, California State University, University of California, or state agency located within its service area, the information relied upon in setting the fee or increase, including the methodology used to calculate and allocate the capital expenditures giving rise to the fee or increase, and an identification of the capital facilities that contribute to the fee or increase, as well as any other information relevant to determining whether or not the fee or increase complies with the provisions of this section. The affected school district, county office of education, community college district, California State University, University of California, or state agency shall designate the individual who is to receive the notice, and the public agency providing public utility service shall direct the notice to that individual. If no specific individual is designated, then the notice shall be addressed to the billing address of the affected facility. In the case of an affected state agency, after an initial notice has been delivered by certified mail to the billing address of the affected state agency facility, subsequent notice may be directed to the billing address of the state agency by first-class mail, unless the affected state agency specifically requests that the notice be directed to a designated individual by certified mail. A subsequent notice to other affected public agency facilities shall be by certified mail directed to the billing address of the affected facility.

(6) Any judicial action or proceeding to protest or challenge a rate or charge that contains a capital facilities fee or to seek a refund of any capital facilities fee imposed on or after July 1, 2000, shall be commenced within 120 days of the effective date of the ordinance, resolution, or motion enacting or increasing the rate, charge, or capital facilities fee, provided that the notice and disclosure requirements of paragraphs (4) and (5) have been followed. If the notice and disclosure requirements of



paragraphs (4) and (5) have not been complied with, the 120-day limitation period is not applicable to the judicial action or proceeding to protest or challenge a rate or charge or to seek the refund of any capital facilities fee imposed on or after July 1, 2000.

(7) No limitation period in Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure may bar any judicial action, proceeding or appeal protesting or seeking a refund of a rate, charge, capital facilities fee or capital facilities fee component of a rate or charge imposed on or after April 1, 2000, if the notice and disclosure requirements of paragraphs (4) and (5) have not been followed.

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

54999.4. Any capital facilities fees paid prior to March 24, 1988, and not protested or challenged pursuant to law on or before January 1, 1987, shall not be subject to refund, except for capital facilities fees paid after July 21, 1986, by a public agency subject to Section 54999.3 that are in excess of the maximum amount authorized by Sections 54999.3 and 54999.35. Agreements entered into prior to or after March 24, 1988, for the payment of capital facilities fees or capacity charges shall be effective.

SEC. 4. Section 13076 of the Public Resources Code is amended to read:

13076. (a) Notwithstanding any other provision of this chapter, and in addition to any other powers conferred thereby, Resort Improvement District Number 1, in the County of Humboldt, may produce, purchase, and sell electrical power within the boundaries of the district.

(b) Except as provided in subdivision (c), any judicial action or proceeding against the district to attack, review, set aside, void, or annul an ordinance, resolution, or motion fixing or changing a rate or charge for an electric commodity or an electric service furnished by the district and adopted on or after July 1, 2000, shall be commenced within 120 days of the effective date of that ordinance, resolution, or motion.



(c) The statute of limitations set forth in subdivision (b) does not apply to any judicial action or proceeding filed pursuant to Chapter 13.7 (commencing with Section 54999) of Part 1 of Division 2 of Title 5 of the Government Code to protest or challenge a rate or charge or to seek the refund of a capital facilities fee if the notice and disclosure requirements of Section 54999.35 of the Government Code have not been followed.

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

10004.5. (a) Except as provided for in subdivision (b), any judicial action or proceeding against a municipal corporation that provides electric utility service, to attack, review, set aside, void, or annul an ordinance, resolution, or motion fixing or changing a rate or charge for an electric commodity or an electric service furnished by a municipal corporation and adopted on or after July 1, 2000, shall be commenced within 120 days of the effective date of that ordinance, resolution, or motion.

(b) This section does not apply to any judicial action or proceeding filed pursuant to Chapter 13.7 (commencing with Section 54999) of Part 1 of Division 2 of Title 5 of the Government Code to protest or challenge a rate or charge or to seek the refund of a capital facilities fee if the notice and disclosure requirements of Section 54999.35 of the Government Code have not been followed.

SEC. 6. Section 12702.5 is added to the Public Utilities Code, to read:

12702.5. (a) Except as specified in subdivision (b), any judicial action or proceeding against a district that provides electric utility service, to attack, review, set aside, void, or annul an ordinance, resolution, or motion fixing or changing a rate or charge for an electric commodity or an electric service furnished by a district and adopted on or after July 1, 2000, shall be commenced within 120 days of the effective date of that ordinance, resolution or motion.

(b) The statute of limitations specified in subdivision (a) does not apply to any judicial action or proceeding filed pursuant to Chapter 13.7 (commencing with Section



54999) of Part 1 of Division 2 of Title 5 of the Government Code to protest or challenge a rate or charge or to seek the refund of a capital facilities fee if the notice and disclosure requirements of Section 54999.35 of the Government Code have not been followed.

SEC. 7. Section 16402.5 is added to the Public Utilities Code, to read:

16402.5. (a) Except as provided in subdivision (b), any judicial action or proceeding against a district that provides electric utility service, to attack, review, set aside, void, or annul an ordinance, resolution, or motion fixing or changing a rate or charge for an electric commodity or an electric service furnished by a district and adopted on or after July 1, 2000, shall be commenced within 120 days of the effective date of that ordinance, resolution, or motion.

(b) This section does not apply to any judicial action or proceeding filed pursuant to Chapter 13.7 (commencing with Section 54999) of Part 1 of Division 2 of Title 5 of the Government Code to protest or challenge a rate or charge or to seek the refund of a capital facilities fee if the notice and disclosure requirements of Section 54999.35 of the Government Code have not been followed.

SEC. 8. Section 22651.5 is added to the Water Code, to read:

22651.5. (a) Except as specified in subdivision (b), any judicial action or proceeding against a district to attack, review, set aside, void, or annul an ordinance, resolution, or motion fixing or changing a rate or charge for an electric commodity or an electric service furnished by the district and adopted on or after July 1, 2000, shall be commenced within 120 days of the effective date of that ordinance, resolution, or motion.

(b) The statute of limitations specified in subdivision (a) does not apply to any judicial action or proceeding filed pursuant to Chapter 13.7 (commencing with Section 54999) of Part 1 of Division 2 of Title 5 of the Government Code to protest or challenge a rate or charge or to seek the refund of a capital facilities fee if the notice and



disclosure requirements of Section 54999.35 of the Government Code have not been followed.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

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



Approved _____, 2000

Governor

