



# School Business Law Update

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January 10, 2007

## NEW METHOD APPROVED FOR LEVYING MOST PUBLIC AGENCY UTILITY CAPITAL FACILITIES FEES

The passage of AB 2951 has changed the way municipal utilities may impose charges on a school district, county office of education, community college district, the California State University, the University of California, or a state agency, subject to certain restrictions. Under the prior law, municipal utilities were required to negotiate “capital facilities fee” increases with school districts and other public agencies. This bill revises the definition of the term “capital facilities fee” to mean a “nondiscriminatory” connection fee, as defined, or a nondiscriminatory capacity charge, as defined, or both, and allows a fee to be imposed on school districts and other public agencies without negotiation.

Effective January 1, 2007, public agencies that provide public utility services will be authorized to impose nondiscriminatory rates, charges, surcharges, or fees on other public agencies without negotiation, except for capital facilities fees subject to Government Code section 54999.3 (fees or increases in fees necessary to defray actual construction costs of a public utility facility actually serving a public agency) which must continue to be negotiated with schools and other public agencies. The other major provisions of the bill are that it:

1. Authorizes a public utility to charge a public agency rates, charges, surcharges, or fees that are determined on the basis of the same objective criteria and methodology applicable to comparable nonpublic users.
2. Specifies that when a public agency does charge a fee, any public agency receiving service from the public agency providing the public utility service must pay the imposed fee.
3. Specifies that such a fee for public utility service, other than electricity or gas, shall not exceed the reasonable cost of providing the public utility service.
4. Specifies a 120-day statute of limitations for a paying agency to seek a refund or challenge an increase in fees, rates, charges, or surcharges.
5. Specifies that a public utility may impose or increase a fee, rate, charge, or surcharge no earlier than 120 days from the effective date of the imposition or increase of such fees, rates, or charges.
6. Requires a public utility, upon request of any affected public agency, to provide 60-day advance notice of any hearing to establish or increase rates, charges, surcharges, or fees.
7. Requires a public utility, upon request of an affected public agency and not less than 30 days prior to the date of any hearing to establish or increase rates, charges, surcharges, or fees, to convene a meeting

to discuss the data and methodology for establishing or increasing those rates, charges, surcharges, or fees, except for capital facilities fees which are negotiated.

8. Specifies that the provisions of this bill are not intended to affect any litigation involving public utility services provided prior to January 1, 2007.
9. Specifies that the provisions of this bill pertaining to judicial actions filed by public agencies to either validate or challenge the validity of a fee, rate, charge, or surcharge, or increase in any of these costs, will sunset on January 1, 2010.
10. Requires a public agency providing public utility service to complete a cost of service study at least once every 10 years that addresses the cost of providing public utility service to public schools.

Districts served by a public agency providing public utility service(s) (not public utilities like PG&E) should request in writing that the public agency advise the district 60 days before any public hearing on the establishment or raising of any fee, rate, charge, or surcharge and that 30 days prior to the date of any hearing to establish or increase rates, charges, surcharges, or fees, the public agency convene a meeting to discuss the data and methodology for establishing or increasing those rates, charges, surcharges, or fees. Additionally, districts should keep in mind that the time period in which to challenge a disputed fee set by a public agency providing public utility service(s) is only 120 days.

If you have questions concerning this opinion or topic, please contact me or the other members of our Business Practice Group.

—Chris Burger

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