

August 3, 1999

To: Board of Directors (Communications and Legislation Committee--Action)

From: General Manager _____

Submitted by: Adán Ortega, Jr. _____
Executive Assistant to the General Manager
and Acting Chief of Communications

Subject: Express Support for Senate Bill 1132 (Costa)

RECOMMENDATION(S)

Support SB 1132 (Costa).

EXECUTIVE SUMMARY

SB 1132 would clarify the extent to which public utilities may impose fees on specified public institutions for capital costs and limit the period during which such fees can be challenged.

DETAILED REPORT

The legal authority for public utilities to impose fees on public institutions (e.g., public educational institutions and state agencies) in order to recover capital costs has been hotly contested over the past several years. Courts have consistently held that specified public institutions are exempt from special assessments. In the 1986 decision of San Marcos Water Dist. v. San Marcos Unified School Dist., the California Supreme Court held that special assessments include capacity fees (covering the cost of necessitated upgrades in water and sewer systems, and hence could not be included in utility bills).

In 1988 the Legislature enacted AB 1350, which established mutual conferral procedures for utilities wishing to impose capital recovery fees. In 1996, several Bay Area colleges and school districts sued their respective water agencies, claiming the public utilities illegally embedded capital facilities fees in monthly service rates. The water agencies maintain that the claimants mistake permissible monthly service fees for non-sanctioned capital facilities fees.

This bill would require a public utility imposing a capital-related fee or charge on a specified public institution to provide 30-day notice by registered mail of a proposed fee or charge increase. The public institution would then have 120 days to challenge the increase.

SB 1132 would also require the monthly service bill to distinguish charges for operations and maintenance from charges for capital recovery. This capital component of the monthly bill could not include that portion of capital costs for extending service to new users.

Several of Metropolitan's member agencies as well as the Association of California Water Agencies have supported SB 1132. While it does not directly impact Metropolitan, SB 1132 appears to present a fair compromise for cost allocation between public utilities and their public sector customers.

JWM:pms

Attachment 8-5A

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**The following 9 pages are attachments to
Board Letter 8-5**

AMENDED IN ASSEMBLY JULY 15, 1999

AMENDED IN SENATE MAY 6, 1999

AMENDED IN SENATE APRIL 13, 1999

AMENDED IN SENATE APRIL 5, 1999

SENATE BILL

No. 1132

Introduced by Senator Costa

February 26, 1999

An act to amend Sections 54999.1 and 54999.3 of, and to add Sections 54999.7 and 54999.8 to, the Government Code, relating to capital facilities fees.

LEGISLATIVE COUNSEL'S DIGEST

SB 1132, as amended, Costa. Capital facilities fees.

(1)

Existing law provides for the imposition by a public utility of a capital facilities fee on any school district, county office of education, community college district, the California State University, the University of California, or state agency, subject to certain restrictions. Existing law defines the terms "capital facilities fee" or "capacity charge" as any nondiscriminatory charge to pay the capital cost of a public utility facility.

This bill would revise the definition of the term "capital facilities fee" to mean a nondiscriminatory charge, ~~including~~ *a limited to any* connection fee, as defined, or capacity charge, as defined, or both. The bill would revise that fee provision to modify existing provisions and impose additional restrictions.

The bill would specify that capital facilities fees may be imposed where necessary to defray the actual construction costs of that portion of a public utility facility actually serving a public agency. The bill would require any judicial action or proceeding to seek a refund of capital facilities fees, or challenging the validity of a capital facilities fee, paid by a public agency to be commenced within a specified period of time. The bill would require any action by a public agency to be in accordance with specified law. The bill, notwithstanding any of the existing provisions relating to the imposition of a capital facilities fee, would authorize a public agency that provides public utility service to charge a public agency monthly service rates or charges, on the basis of the same objective criteria and methodology applicable to comparable nonpublic users, including the costs of operation, maintenance, construction, repair, replacement, or rehabilitation of facilities, or debt service payments on facilities, ~~that are of benefit in providing public utility service to the public agency~~ *not in excess of the reasonable cost of providing the public utility service, as prescribed. The bill would also prescribe the conditions upon which the service charge would be imposed. The bill would also establish a statute of limitation for judicial review of new service charges, as prescribed.* To the extent that those requirements would impose a new program or higher level of service on local entities, this bill would impose a state-mandated local program. The bill would state that specified existing law does not affect claims presented in accordance with specified law governing the presentation of claims.

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by~~



~~the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~yes~~ *no*.

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

1 SECTION 1. Section 54999.1 of the Government
2 Code is amended to read:

3 54999.1. For purposes of this chapter:

4 (a) "Actual construction costs" includes the cost of all
5 activities necessary or incidental to the construction of a
6 public utility facility, such as financing, planning,
7 designing, acquisition of property or interests in
8 property, construction, reconstruction, and
9 rehabilitation.

10 (b) "Capacity charge" means a ~~one-time~~ charge
11 ~~imposed at the time a public agency facility is connected~~
12 ~~to a public utility to pay for public utility facilities in~~
13 *imposed to pay for public agency facilities in* existence at
14 the time a charge is imposed or to pay for new facilities
15 to be constructed in the future ~~that are, or will be, of~~
16 ~~benefit to the public agency upon which the charge is~~
17 ~~imposed.~~

18 (c) "Capital facilities fee" means a ~~any~~ *any*
19 nondiscriminatory charge, ~~including~~ *limited to* a
20 connection fee or a capacity charge, or both.

21 (d) "Connection fee" means a fee for the physical
22 facilities necessary to connect a public agency facility to
23 a public utility, including, but not limited to, meters,
24 meter boxes, and pipelines to make the connection, that
25 does not exceed the actual cost of labor and materials for
26 the installation of those facilities.

27 (e) "Nondiscriminatory" means that the capital
28 facilities fee does not exceed an amount determined on
29 the basis of the same objective criteria and methodology
30 applicable to comparable nonpublic users, and is not in
31 excess of the proportionate share of the cost of the public
32 utility facilities of benefit to the person or property upon



1 which the charge is imposed, based upon the
2 proportionate share of use of those facilities.

3 (f) "Public agency" means the United States or any of
4 its agencies, the state or any of its agencies, the Regents
5 of the University of California, a county, a city, a district,
6 a public authority, or any other political subdivision or
7 public corporation of this state.

8 (g) "Public utility facility" means a facility for the
9 provision of water, light, heat, communications, power, or
10 garbage service, for flood control, drainage or sanitary
11 purposes, or for sewage collection, treatment, or disposal.

12 (h) "Public utility service" means service provided
13 from a public utilities facility.

14 (i) "State agency" or "state" means any state office,
15 department, division, bureau, board, or commission.

16 (j) A capital facilities fee is imposed on the date on
17 which the statement of charges for a public utility service
18 is mailed or otherwise transmitted to the public agency
19 that is receiving or will receive the public utility's service.

20 SEC. 2. Section 54999.3 of the Government Code is
21 amended to read:

22 54999.3. The imposition of a capital facilities fee on
23 any school district, county office of education, community
24 college district, the California State University, the
25 University of California, or state agency shall be subject
26 to all of the following:

27 (a) (1) Capital facilities fees may be imposed where
28 necessary to defray the actual construction costs of that
29 portion of a public utility facility actually serving a public
30 agency.

31 (2) Any public agency providing public utility service
32 on or after July 21, 1986, may continue to charge any
33 capital facilities fee that was imposed prior to that date on
34 the public agency using the public utility service and was
35 not protested or challenged pursuant to law prior to
36 January 1, 1987, or increase that capital facility fee in an
37 amount not to exceed the percentage increase in the
38 Implicit Price Deflator for State and Local Government
39 Purchases, as determined by the Department of Finance



1 and any public agency shall pay any capital facilities fees
2 authorized by this subdivision.

3 (b) On and after July 21, 1986, any public agency
4 proposing to initially impose a capital facilities fee or to
5 increase an existing capital facilities fee in excess of the
6 amount set forth in subdivision (a), may do so after
7 agreement has been reached between the two agencies
8 through negotiations entered into by both parties.

9 (c) Upon request of the affected public agency or
10 upon increase pursuant to subdivision (a), the public
11 agency imposing or increasing the fee shall identify the
12 amount of the capital facilities fee. The public agency
13 imposing or increasing the capital facilities fee has the
14 burden of producing evidence to establish that the capital
15 facilities fee is nondiscriminatory and that the amount of
16 the capital facilities fee does not exceed the amount
17 necessary to provide capital facilities for which the fee is
18 charged.

19 SEC. 3. Section 54999.7 is added to the Government
20 Code, to read:

21 54999.7. (a) Any judicial action or proceeding to seek
22 a refund of a capital facilities fee, or challenging the
23 validity of a capital facilities fee, imposed by a public
24 agency pursuant to this chapter, *on or after January 1,*
25 *2000*, shall be commenced within 120 days of the effective
26 date of the imposition of the fee.

27 (b) Any action by a public agency under this chapter
28 shall be in accordance with Chapter 9 (commencing with
29 Section 860) of Title 10 of Part 2 of the Code of Civil
30 Procedure.

31 SEC. 4. Section 54999.8 is added to the Government
32 Code, to read:

33 54999.8. (a) Notwithstanding any other provision of
34 this chapter, a public agency that provides public utility
35 service may charge a public agency monthly service rates
36 or charges, on the basis of the same objective criteria and
37 methodology applicable to comparable nonpublic users,
38 including the costs of operation, maintenance,
39 construction, repair, replacement, or rehabilitation of
40 facilities, or debt service payments on facilities, that are



1 ~~of benefit in providing public utility service to the public~~
2 ~~agency.~~ *not in excess of the reasonable cost of providing*
3 *the public utility service, based on the proportionate*
4 *share of the use of those facilities.*

5 *(b) The imposition of a monthly service rate or charge*
6 *on any school district, county office of education,*
7 *community college district, the California State*
8 *University, the University of California, or state agency*
9 *shall be subject to all of the following:*

10 *(1) The monthly service rate or charge, and the rates*
11 *or charges shown on the billing statement, shall be*
12 *separated into an operations and maintenance*
13 *component and, if applicable, a capital component.*
14 *Capital costs that are included in the operations and*
15 *maintenance component, if any, shall only include costs*
16 *that are necessary to maintain a public utility facility in*
17 *efficient operating condition. The capital component of*
18 *the monthly service rate or charge shall only include the*
19 *actual construction costs, as defined in subdivision (a) of*
20 *Section 54999.1, for public utility facilities not in excess of*
21 *the proportionate share of the costs of the public utility*
22 *facilities of benefit to the school district, county office of*
23 *education, community college district, the California*
24 *state university, the University of California, or state*
25 *agency upon which the rate or charge is imposed, based*
26 *upon the proportionate share of use of those facilities. The*
27 *capital component shall not include the cost of public*
28 *utility facilities that are necessary to establish public*
29 *utility service for a new user, serve new development, or*
30 *provide capacity to new users, unless a portion of the cost*
31 *of those facilities will benefit existing users.*

32 *(2) The public utility service provider proposing to*
33 *increase the monthly service rate or charge has the*
34 *burden of producing evidence to establish that the rate*
35 *or charge is nondiscriminatory and that the amount of the*
36 *rate or charge does not exceed the amount necessary to*
37 *provide public utility services for which the rate or*
38 *charge is imposed, that each component of the monthly*
39 *service rate or charge complies with the requirements of*
40 *this section, and that capital facilities fees, as defined in*



1 *Section 54999.1, have not been included in the monthly*
2 *service rate or charge.*

3 *(3) Documents supporting the proposed increase in*
4 *the monthly service rates or charges shall be readily*
5 *available for inspection by the public, including, but not*
6 *limited to, all of the following:*

7 *(A) A capital improvement plan or other data and*
8 *information relied upon in setting the monthly service*
9 *rate or charge.*

10 *(B) A description of the criteria and methodology*
11 *used to calculate the components of the monthly service*
12 *rate or charge.*

13 *(C) A description of any of the estimated cost of any*
14 *capital expenditure and any allocation of those costs to*
15 *facilities or capacity needed for new users, including the*
16 *criteria and methodology for such allocation.*

17 *(c) A school district, county office of education,*
18 *community college district, the California State*
19 *University, the University of California, or state agency*
20 *may request to be notified 30 days in advance of the date*
21 *when action may be taken by the legislative body of the*
22 *public utility service provider to approve an increase in*
23 *the monthly service rate or charge.*

24 *(1) A request filed pursuant to this section shall be*
25 *submitted in writing to the office of the public utility*
26 *service provider. The request shall contain the name of*
27 *the person and mailing address to which notice shall be*
28 *provided by the public utility service provider. Any*
29 *request for notice filed pursuant to this section shall be*
30 *valid for one year from the date on which it was filed*
31 *unless a renewal request is filed. Renewal requests for*
32 *notice shall be filed within 90 days after January 1 of each*
33 *year.*

34 *(2) Notice shall be sent by registered mail, return*
35 *receipt requested, and shall be deposited in a post office*
36 *or other like facility regularly maintained by the United*
37 *States Postal Service, in a sealed envelope, with postage*
38 *paid. Notice by mail is complete at the time of deposit.*
39 *The failure of any school district, county office of*
40 *education, community college district, the California*



1 State University, the University of California, or state
2 agency to receive the notice given pursuant to this
3 section shall not constitute grounds for any court to
4 invalidate the actions of the legislative body for which the
5 notice was given. Notice shall include the existing
6 monthly service rate or charge, and the amount of the
7 increase proposed in the existing rate or charge. Notice
8 also shall include the location and times when the
9 administrative record may be inspected.

10 (3) Action taken to adopt an increase in the monthly
11 rate or charge for which notice was provided pursuant to
12 this subdivision that is continued to any subsequent
13 meeting of the legislative body shall not require further
14 notice beyond that required pursuant to Chapter 9
15 (commencing with Section 54950) of Division 2 of Title
16 5.

17 (4) In case of a generally recognized emergency, a
18 legislative body may pass a resolution by a four-fifths vote
19 of its members declaring that the public interest and
20 necessity demand the immediate increase of public
21 utility service rates or charges to safeguard life, health, or
22 property.

23 (5) The legislative body may establish a reasonable
24 annual fee for sending the notice based on the estimated
25 cost of providing the service. The fee shall not exceed
26 twenty-five dollars (\$25) per public agency.

27 (d) (1) Any judicial action or proceeding to attack,
28 review, set aside, void, or annul an ordinance, resolution,
29 or motion levying a new service rate or charge, or
30 modifying or amending an existing rate or charge, duly
31 enacted on or after January 1, 2000, by a public utility
32 service provider, shall be commenced within 120 days of
33 the effective date of the ordinance, resolution, or motion.

34 (2) If an ordinance, resolution, or motion provides for
35 an automatic adjustment in a monthly service rate or
36 charge, and the automatic adjustment results in an
37 increase in the amount of a rate or charge, any judicial
38 action or proceeding to attack, review, set aside, void, or
39 annul the increase shall be commenced within 120 days
40 of the effective date of the increase.



1 *(e) The provisions of this section shall apply to actions*
2 *taken after January 1, 2000.*

3 ~~SEC. 5. Notwithstanding Section 17610 of the~~
4 ~~Government Code, if the Commission on State Mandates~~
5 ~~determines that this act contains costs mandated by the~~
6 ~~state, reimbursement to local agencies and school~~
7 ~~districts for those costs shall be made pursuant to Part 7~~
8 ~~(commencing with Section 17500) of Division 4 of Title~~
9 ~~2 of the Government Code. If the statewide cost of the~~
10 ~~claim for reimbursement does not exceed one million~~
11 ~~dollars (\$1,000,000), reimbursement shall be made from~~
12 ~~the State Mandates Claims Fund.~~

