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**TITLE 5. LOCAL AGENCIES [50001 - 57607]** ( Title 5 added by Stats. 1949, Ch. 81. )

**DIVISION 2. CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 55821]** ( Division 2 added by Stats. 1949, Ch. 81. )

**PART 1. POWERS AND DUTIES COMMON TO CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 54999.7]** ( Part 1 added by Stats. 1949, Ch. 81. )

**CHAPTER 13.7. Liability of Public Entities for Public Utility Capital Facilities Fees [54999 - 54999.7]** ( Chapter 13.7 added by Stats. 1988, Ch. 53, Sec. 1. )

**54999.** (a) The Legislature finds and declares that many public entities that provide public utility service have imposed capital facilities fees applicable to users of public utility facilities in order to equitably apportion the cost of capital facilities construction or expansion required by all public and private users of the facilities. In the recent decision in *San Marcos Water Dist. v. San Marcos Unified School Dist.*, 42 Cal. 3d 154, the California Supreme Court held that public entities cannot be made subject to these fees without statutory authorization. As a result, the fiscal stability and service capabilities of the affected public utility service agencies which have in good faith collected and spent these fees for capital improvements are seriously impaired as is the ability to finance essential future facilities.

(b) The Legislature further finds that the holding in the *San Marcos Water Dist. v. San Marcos Unified School Dist.*, 42 Cal. 3d 154, should be revised to authorize payment and collection of capital facilities fees subject to the limitations set forth in this chapter, and in furtherance of this finding the Legislature hereby enacts the following provisions.

(Added by Stats. 1988, Ch. 53, Sec. 1. Effective March 24, 1988.)

**54999.1.** For purposes of this chapter:

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

(b) "Capacity charge" means a one-time charge to recover the costs of public utility facilities necessary to establish new or expand existing public utility service to a public agency.

(c) (1) "Capital facilities fee" means a nondiscriminatory connection fee, a nondiscriminatory capacity charge, or both. "Capital facilities fee" does not include any other rate, charge, or surcharge, or any capital component thereof.

(2) For purposes of this subdivision, "nondiscriminatory" means that the fee does not exceed an amount determined on the basis of the same objective criteria and methodology applicable to comparable nonpublic users, and is not in excess of the proportionate share of the cost of the public utility facilities of benefit to the person or property being charged, based upon the proportionate share of use of those facilities.

(d) "Connection fee" means a fee to recover the costs of the physical facilities necessary to directly connect a public agency facility to a public utility service provided by a public agency, including, but not limited to, meters, meter boxes, and pipelines to make the connection, and the actual cost of labor and materials for the installation of those facilities.

(e) "Public agency" means the United States or any of its agencies, the state or any of its agencies, the California State University, the Regents of the University of California, a county, a county office of education, a city, a school district, community college district, or any other district, a public authority, or any other political subdivision or public corporation of this state.

(f) "Public school" means the California State University, the Regents of the University of California, a county office of education, a school district, or a community college district.

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

(h) "Public utility service" means service for water, light, heat, communications, power, or garbage, or for flood control, drainage or sanitary purposes, or sewage collection, treatment, or disposal, provided by a public agency.

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

*(Amended by Stats. 2006, Ch. 866, Sec. 1. Effective January 1, 2007.)*

**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.

*(Amended by Stats. 2000, Ch. 146, Sec. 1. Effective July 21, 2000.)*

**54999.3.** However, the imposition 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 shall be subject to the following:

(a) 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 which was imposed prior to that date on the public agency using the public utility service and 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.

(b) On and after July 21, 1986, 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 subdivision (a), may do so after agreement has been reached between the two agencies through negotiations entered into by both parties.

(c) Upon request of the affected public agency or upon increase pursuant to subdivision (a), 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 that the capital facilities fee is nondiscriminatory and that the amount of the capital facilities fee does not exceed the amount necessary to provide capital facilities for which the fee is charged.

*(Added by Stats. 1988, Ch. 53, Sec. 1. Effective March 24, 1988.)*

**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.

*(Added by Stats. 2000, Ch. 146, Sec. 2. Effective July 21, 2000.)*

**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.

*(Amended by Stats. 2000, Ch. 146, Sec. 3. Effective July 21, 2000.)*

**54999.5.** Capital facilities fees paid by school districts for public utility facilities to serve school facilities for which an application for funding is filed on or after the effective date of this chapter may, for purposes of Chapter 12 (commencing with Section 17000) of

Part 10 of the Education Code, be included by the State Allocation Board as a "cost of project" within the meaning of subdivision (b) of Section 17702 of the Education Code.

*(Amended by Stats. 2006, Ch. 538, Sec. 312. Effective January 1, 2007.)*

**54999.6.** Should any provision or clause of this chapter or application thereof to any person or circumstance be held invalid or unconstitutional, that invalidity or unconstitutionality shall not affect other provisions or applications thereof which can be given effect without the invalid provision or application and, to this end, the provisions of this chapter are declared severable. By adopting this chapter, the Legislature hereby declares that it would have adopted this chapter without that provision or provisions.

*(Added by Stats. 1988, Ch. 53, Sec. 1. Effective March 24, 1988.)*

**54999.7.** (a) Any public agency providing public utility service may impose a fee, including a rate, charge, or surcharge, for any product, commodity, or service provided to a public agency, and any public agency receiving service from a public agency providing public utility service shall pay that fee so imposed. Such a fee for public utility service, other than electricity or gas, shall not exceed the reasonable cost of providing the public utility service.

(b) A fee, including a rate, charge, or surcharge, for any product, commodity, or service provided to a public agency, shall be determined on the basis of the same objective criteria and methodology applicable to comparable nonpublic users, based on customer classes established in consideration of service characteristics, demand patterns, and other relevant factors.

(c) A public agency providing public utility service shall complete a cost of service study at least once every 10 years that addresses the cost of providing public utility service to public schools. The study shall describe the methodology for the determination of cost responsibility, which may be identified by reference to appropriate industry ratemaking principles, including guidance associated with designing and developing water rates and charges issued by the American Water Works Association or guidance associated with other comparable industry principles recognized by public agencies providing public utility service.

(d) In addition to other notices required pursuant to state law or local ordinance or rule, whenever a public agency that provides public utility service holds a public meeting to establish or increase any rate, charge, surcharge, or fee, that public agency shall provide a written notice of the meeting not less than 60 days prior to the date of the public meeting to any public agency that has filed a written request for such a notice with either the clerk of the governing body or with any other person designated by the governing body to receive these requests.

(e) Upon request of any affected public agency made not less than 30 days prior to the date of the public meeting to establish or increase any rate, charge, surcharge, or fee, a public agency that provides public utility service shall provide the affected public agency with the data and proposed methodology for establishing or increasing the rate, charge, surcharge, or fee. The data and proposed methodology may be provided during a meeting of staff or other representatives of each agency.

(f) This section shall not apply to impositions or increases of capital facilities fees subject to Section 54999.3.

*(Added by Stats. 2006, Ch. 866, Sec. 2. Effective January 1, 2007.)*