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C.A.S.H. WORKSHOP

“Local Government Fees and Charges--Do You Have to Pay?”

Tuesday, December 4, 2007

9:00 a.m. to 3:00 p.m.

Doubletree Hotel

2001 Point West Way

Sacramento, California

**AB 2951--WATER AND SEWER FEES:
WHAT'S LEFT TO NEGOTIATE?**

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AB 2951 Water and Sewer Fees— What's Left to Negotiate?

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Background

In 1988, the Legislature adopted Government Code sections 54999-54999.6, which authorize public utilities to charge capital facilities fees to public agencies.

The fees were limited to 1986 rates plus inflationary increases, or a negotiated rate between the utility and public agency.

(Gov. Code § 54999.3)

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AB 2951 CHANGES

AB 2951 made three major changes:

- ❖ Redefined “capital facilities fees” to increase fees that can be imposed without negotiation.
- ❖ Specified requirements for calculation of utility service fees.
- ❖ Required utilities to prepare a cost of service study every 10 years regarding school districts.

(Gov. Code §§ 54999.1, subd. (c) & 54999.7, subd. (a), (c).)

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CAPITAL FACILITIES FEES PRE-AB 2951

Prior to AB 2951, capital facilities fees subject to negotiated rates included “any nondiscriminatory charge to pay the capital cost of a public utility facility.”

(Former Gov. Code § 54999.1, subd. (b).)

This definition included recurring charges attached to monthly utility bills, as well as one-time charges for new facilities and charges for connecting utilities to public agency customers.

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AB 2951 CAPITAL FACILITIES FEES

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‘Capital facilities fee’ means a nondiscriminatory connection fee, a nondiscriminatory capacity charge, or both. ‘Capital facilities fee’ does not include any other rate, charge, surcharge, *or any capital component thereof.*”

(Gov. Code § 54999.1, subd. (c).)

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AB 2951 CAPITAL FACILITIES FEES

By limiting the definition of capital facilities fees, the Legislature removed capital components of regular service bills from the realm of negotiable fees.

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WHAT FEES ARE NEGOTIABLE

The only remaining capital facilities fees for which negotiation is still required are “connection fees” and “capacity charges.”

- ❖ “‘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...”
- ❖ “‘Capacity charge’ means a *one-time* charge to recover the costs of public utility facilities necessary to establish new or expand existing public utility services to a public agency.”

(Gov. Code § 54999.1, subd. (b)(d).)

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Public Utility Services Fees

AB 2951 allows public utilities to impose, without negotiation, utility service fees for “any product, commodity, or service provided by a public utility to a public agency.”

(Gov. Code § 54999.7, subd. (a).)

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LIMITATIONS ON UTILITY SERVICE FEES

- ❖ Utility service fees must be determined using the same objective criteria and methodology used for comparable non-public customers of the utility.
- ❖ Utility service fees cannot exceed the reasonable cost of providing the service. (True for fees for electricity or gas?)

(Gov. Code § 54999.7, subd. (a), (b).)

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JUDICIAL REVIEW

- ❖ A public agency may challenge the validity of a capital facilities fee or a utility service fee by suing the utility that imposed the assessment.
- ❖ Any such lawsuit must be filed within 120 days of the effective date of the fee.

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COST OF SERVICE STUDY

- ❖ Every 10 years, each public utility must prepare a cost of service study that addresses the cost of providing services to public schools.
- ❖ The survey must describe its methodology.
- ❖ There is no auditing requirement.
- ❖ (What happens if there is a decrease in use?)

(Gov. Code § 54999.7, subd. (c).)