

# TOWNSEND

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## MEMO

**To:** City of Cupertino  
Legislative Review Committee

**From:** Townsend Public Affairs, Inc.

**Date:** June 18, 2021

**Subject:** Consider adopting a position on SB 323 (Caballero) Local government: water or sewer service: legal actions

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### Bill Information

The official text of SB 323 can be found [here](#)<sup>1</sup>.

### Summary

SB 323 provides the same legal protections to public agency water and sewer rates that are also afforded to fees and charges that fund other essential government services. Specifically, this bill:

- Establishes a 120-day statute of limitations for any lawsuit that challenges a fee change for water and sewer service, beginning on the effective date of the fee or change.
- Specifies that the 120-day statute of limitations does not apply to fees or changes for water or sewer services for which another statute establishes a specific time and procedure for bringing a judicial action against a fee or charge of that type.
- The bill's provisions are only applicable changes in water and sewer fees enacted after January 1, 2022.

### Status

SB 323 passed the Senate and has been double referred to the Assembly Committees on Local Government and Judiciary. Its consideration in Assembly Local Government is scheduled for Wednesday, June 9<sup>th</sup>. A date for its consideration in Assembly Judiciary has yet to be scheduled.

### Support

According to the author, "The COVID-19 pandemic has put strain on many essential businesses, including ones that the public depends on for basic needs. Public utilities, such as water and sewer service providers have experienced a reduction in the number of consumers who are able to pay for their services. Yet, because of Governor Newsom's Executive Order prohibiting water shutoffs, water agencies have continued to service every customer regardless of their ability to pay, which has made water districts' revenue and financial planning more unpredictable.

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<sup>1</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB323](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB323)

In light of this new financial strain, another long standing issue comes into focus that needs to be addressed- the lack of a time line for rate challenges. Other utility agencies, such as electricity, have a 120-day statute of limitations for challenges to rates or charges that have been in effect for decades. This is because lawsuits arising years after rates were adopted create unstable funding for the agency. This statute of limitations has not been extended to water agencies yet, and the inability to plan for such claims effects funding necessary to supply safe drinking water, upgrade and improve aging infrastructure, and operate effectively.

That is why I have introduced SB 323, which would require an interested party to bring an action within 120 days after the local water agency adopts the new rate. By allowing customers to bring challenges within a reasonable – but limited – period of time, this proposal would balance the interests of ratepayers with those of public water and sewer agencies and end the current piecemeal character of existing law.”

Supporters of SB 323 include: Association of California Water Agencies, California Special Districts Assn, League of California Cities, California Assn of Sanitation Agencies, California Municipal Utilities Assn, Santa Clara Valley Water District and numerous local water districts and cities.

#### Opposition

Opponents argue that the statute of limitations denies due process and is likely unconstitutional. The Consumer Attorneys of California write, “Article XIII D, section 6, subdivision (b) of the California Constitution mandates apply to all existing fees or charges. In other words, this constitutional provision clearly states the intent to leave open constitutional challenges regardless of when the fee itself was originally enacted. This is likely the case because although the fee may have been set in place 10 years ago, the injury is suffered each month the illegal fee is charged and collected.”

Opponents of SB 323 include: Consumer Attorneys of California and the Howard Jarvis Taxpayers Association

#### Recommended Action

Adopt a support position on SB 323 and authorize the Mayor to send letters to the state legislature