

AMENDED IN ASSEMBLY APRIL 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1027

Introduced by Assembly Member Buchanan

February 18, 2011

An act to add the heading of Part 1 (commencing with Section 9500) to, and to add Part 2 (commencing with Section 9510) to, Division 4.8 of the Public Utilities Code, relating to local publicly owned electric utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1027, as amended, Buchanan. Local publicly owned electric utilities: utility poles and support structures.

(1) Existing law provides for the creation of local publicly owned electric utilities, which include municipal corporations, public utility districts, and irrigation districts, that furnish electric services.

This bill would require a local publicly owned electric utility to make ~~surplus~~ *appropriate* space and ~~excess~~ capacity on and in their utility poles and support structures available for use by cable television corporations, video service providers, and telephone corporations. The bill would require fees adopted to cover the costs to provide this use, *and terms and conditions of access*, to meet specified requirements, and would specify the manner in which these fees *and terms and conditions of access* could be challenged. By imposing new duties on local utilities, the bill would impose a state-mandated local program.

(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.

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.

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

1 SECTION 1. The heading of Part 1 (commencing with Section
2 9500) is added to Division 4.8 of the Public Utilities Code, to read:

3
4 PART 1. LOW-INCOME WEATHERIZATION PROGRAMS

5
6 SEC. 2. Part 2 (commencing with Section 9510) is added to
7 Division 4.8 of the Public Utilities Code, to read:

8
9 PART 2. UTILITY POLES AND SUPPORT STRUCTURES

10
11 9510. (a) The Legislature finds and declares that in order to
12 promote *wireline and wireless* broadband access and adoption, it
13 is in the interest of the state to ensure that local publicly owned
14 electric utilities, *including irrigation districts*, that own or control
15 utility poles and support structures, including ducts and conduits,
16 make available ~~surplus space and excess~~ *appropriate space and*
17 capacity on and in those structures to cable television corporations,
18 video service providers, and telephone corporations under
19 reasonable rates, terms, and conditions.

20 (b) The Legislature further finds and declares that the oversight
21 of fees *and other requirements* imposed by local publicly owned
22 electric utilities as a condition of providing the space or capacity
23 described in subdivision (a) is a matter of statewide interest and
24 concern. Therefore, it is the intent of the Legislature that this part
25 supersedes all conflicting local laws and this part shall apply in
26 charter cities.

27 9511. (a) (1) A local publicly owned electric utility shall make
28 ~~surplus space and excess~~ *appropriate space and* capacity on and
29 in a utility pole and support structure owned or controlled by the
30 local publicly owned electric utility available for use by a cable
31 television corporation, video service provider, or telephone

1 corporation pursuant to reasonable terms and conditions. Rates,
2 terms, and conditions that are specified in a contract executed
3 before January 1, 2012, shall remain valid until the contract, rate,
4 term, or condition expires or is terminated according to its terms,
5 or until the parties to the agreement agree to change the rate,
6 term, or condition. If an annual fee is included in a contract
7 executed before January 1, 2012, but the amount of the fee is left
8 unspecified, the requirements of Section 9512 apply.

9 (2) A local publicly owned electric utility shall respond to a
10 request for use by a cable television corporation, video service
11 provider, or telephone corporation of a utility pole or support
12 structure owned or controlled by the local publicly owned electric
13 utility within 45 days of the request, or 60 days if the request is to
14 attach to over 300 poles. If the request is denied, the local publicly
15 owned electric utility shall provide in the response the reason for
16 the denial and the remedy to gain access to the utility pole or
17 support structure. ~~If a response to a request for use is not provided~~
18 ~~within 45 days, the request is deemed accepted.~~ *If a request to*
19 *attach is accepted, the local publicly owned electric utility, within*
20 *14 days after acceptance of the request, shall provide a cost*
21 *estimate, based on actual cost, for any necessary make-ready work*
22 *required to accommodate the attachment. The requesting party*
23 *shall accept or reject the make-ready cost estimate within 14 days.*
24 *Within 60 days of acceptance of the cost estimate, or within 105*
25 *days in the case of a request to attach to over 300 poles, the local*
26 *publicly owned electric utility shall notify any existing attachers*
27 *that make-ready work for a new attacher needs to be performed*
28 *and the attachers shall move their attachments. Contractors*
29 *authorized by the local publicly owned electric utility may complete*
30 *make-ready work without the consent of the existing attachers, if*
31 *the existing attachers fail to move their attachments by the end of*
32 *the make-ready timeline requirements specified in this paragraph.*

33 (b) If a local publicly owned electric utility has the authority
34 pursuant to other law to impose a fee to provide the use described
35 in this section, that fee shall be adopted and levied consistent with
36 the requirements of this part.

37 (c) *A local publicly owned electric utility may require an*
38 *additional one-time charge equal to three years of the annual fee*
39 *described in Section 9512, for attachments reasonably shown to*
40 *have been made after January 1, 2012, without authorization.*

1 (e)

2 (d) This part does not grant additional authority to a local
3 publicly owned electric utility to impose a fee that is not otherwise
4 authorized by law.

5 9512. (a) (1) An annual fee charged by a local publicly owned
6 electric utility for the use of a utility pole by a cable television
7 corporation, video service provider, or telephone corporation shall
8 not exceed ~~7.45 percent of the local publicly owned electric utility's~~
9 ~~annual costs of ownership of the pole and its supporting anchor.~~
10 *an amount determined by multiplying the percentage of the total*
11 *usable space that would be occupied by the attachment by the*
12 *annual costs of ownership of the pole and its supporting anchor.*
13 *As used in this paragraph and paragraph (2), "usable space"*
14 *means the space above the minimum grade level that can be used*
15 *for the attachment of wires, cables, and associated equipment. It*
16 *shall be presumed, subject to factual rebuttal, that a single*
17 *attachment occupies one foot of usable space and that an average*
18 *utility pole contains 13.5 feet of usable space.*

19 (2) An annual fee charged by a local publicly owned electric
20 utility for use of a support structure by a cable television
21 corporation, video service provider, or telephone corporation shall
22 not exceed the local publicly owned electric utility's annual costs
23 of ownership of the percentage of the volume of the capacity of
24 the structure rendered unusable by the equipment of the cable
25 television corporation, video service provider, or telephone
26 corporation.

27 (3) As used in this subdivision, the "annual costs of ownership"
28 is the sum of the annual capital costs and annual operation costs
29 of the pole or support structure, which shall be the average costs
30 of all similar utility poles or structures owned or controlled by the
31 local publicly owned electric utility. The basis for the computation
32 of annual capital costs shall be historical capital costs less
33 depreciation. The accounting upon which the historical capital
34 costs are determined shall include a credit for all reimbursed capital
35 costs. Depreciation shall be based upon the average service life of
36 the utility pole or support structure. "Annual cost of ownership"
37 does not include costs for any property not necessary for *use by*
38 the cable television corporation, video service provider, or
39 telephone corporation ~~use~~.

1 (b) A local publicly owned electric utility shall not levy a fee
2 that exceeds the estimated amount required to provide use of the
3 utility pole or support structure for which the annual recurring fee
4 is levied. If the fee creates revenues in excess of actual costs, those
5 revenues shall be used to reduce the fee.

6 (c) If the cable television corporation, video service provider,
7 or telephone corporation requests a rearrangement of the utility
8 pole or support structure, and the local publicly owned electric
9 utility has the authority to levy fees as described in Section 9511,
10 the local publicly owned electric utility may charge a one-time
11 reimbursement fee for the actual costs incurred for the
12 rearrangement.

13 *(d) A jointly owned pole, including the cost of the pole on the*
14 *books of the local publicly owned electric utility, is not included*
15 *within the requirements of this part, if a joint owner other than*
16 *the local publicly owned electric utility has the sole control of the*
17 *space that would be used by the cable television corporation, video*
18 *service provider, or telephone corporation.*

19 9513. (a) (1) Before adopting, or increasing, a fee described
20 in Section 9512, *or adopting or changing the terms and conditions*
21 *of access subject to this part*, the local publicly owned electric
22 utility shall hold at least one open and public meeting as part of a
23 regularly scheduled meeting, at which time oral or written
24 presentations relating to the fee *or term or condition of access* may
25 be made.

26 (2) At least 14 days before the meeting described in paragraph
27 (1), the local publicly owned electric utility shall mail notice of
28 the time and place of the meeting, including a general explanation
29 of the matter to be considered, and a statement that the data
30 required by paragraph (3) is available, to a person or entity who
31 files a written request with the local publicly owned electric utility
32 for mailed notice of the meeting.

33 (3) At least 10 days before the meeting described in paragraph
34 (1), the local publicly owned electric utility shall make available
35 to the public data indicating the cost, or estimated cost, to make
36 utility poles and support structures available for use by a cable
37 television corporation, video service provider, or telephone
38 corporation, *if adopting or increasing a fee, and shall make*
39 *available data and rationale for adopting or changing the terms*

1 *and conditions of access, if adopting or changing the terms and*
 2 *conditions of access.*

3 (b) (1) An action by a local publicly owned electric utility to
 4 adopt, or increase, a fee described in Section 9512, *or adopt or*
 5 *change the terms and conditions of access subject to this part,*
 6 shall be taken solely by an ordinance or resolution adopted by the
 7 legislative body of the local publicly owned electric utility. The
 8 legislative body of the local publicly owned electric utility shall
 9 not delegate the authority to adopt or increase the fee *or term or*
 10 *condition of access* to another entity or board.

11 (2) The legislative body of the local publicly owned electric
 12 utility shall approve the ordinance or resolution to adopt or increase
 13 the fee, *or adopt or change the terms and conditions of access*
 14 *subject to this part,* at a subsequent open and public meeting as
 15 part of a regularly scheduled meeting, no earlier than 30 days after
 16 the initial public meeting described in subdivision (a).

17 (3) An action adopting a fee or increasing a fee, *or adopting or*
 18 *changing the terms and conditions of access subject to this part,*
 19 pursuant to this section shall be effective no sooner than 60 days
 20 following the final action on the adoption of the fee or fee increase
 21 *or adoption or change in the terms and conditions of access.*

22 9514. (a) Any person or entity may protest the adoption or
 23 imposition of, or increase of, a fee described in Section 9512, *or*
 24 *adoption or change in the terms and conditions of access subject*
 25 *to this part,* by serving written notice to the governing body of the
 26 local publicly owned electric utility *within 30 days of the action*
 27 *protested.* The written notice shall contain a statement informing
 28 the governing body of the factual elements of the dispute and the
 29 legal theory forming the basis for the protest.

30 (b) The filing of protest pursuant to subdivision (a) shall not be
 31 a basis for the local publicly owned electric utility to withhold
 32 approval of the use of a utility pole or support structure.

33 9515. (a) A judicial action or proceeding to attack, review, set
 34 aside, void, or annul an ordinance, resolution, or motion adopting,
 35 or increasing, a fee described in Section 9512, *or adopting or*
 36 *changing the terms and conditions of access subject to this part,*
 37 shall be commenced within 120 days of the effective date of the
 38 ordinance, resolution, or motion.

39 (b) If an ordinance, resolution, or motion provides for an
 40 automatic adjustment of a fee, and the automatic adjustment results

1 in an increase in the amount of a fee, a judicial action or proceeding
2 to attack, review, set aside, void, or annul the increase shall be
3 commenced within 120 days of the effective date of the increase.

4 (c) An action by a local publicly owned electric utility or
5 interested person shall be brought pursuant to Chapter 9
6 (commencing with Section 860) of Title 10 of Part 2 of the Code
7 of Civil Procedure.

8 (d) A person or entity shall not initiate an action or proceeding
9 pursuant to subdivision (a) unless both of the following
10 requirements are met:

11 (1) The fee *or requirement* will be directly imposed on the
12 person or entity as a condition for the use of a utility pole or support
13 structure.

14 (2) At least 30 days before initiating the action or proceeding,
15 the person or entity requests the local publicly owned electric
16 utility to provide a copy of documents that purport to establish that
17 the fee does not exceed the amount reasonably necessary to cover
18 the cost of the use of the utility pole or support structure, consistent
19 with Section 9512, *or that the term and conditions of access or*
20 *change to the terms and conditions of access are reasonable.* The
21 local publicly owned electric utility may charge a fee for the direct
22 costs of copying the documents requested pursuant to this
23 paragraph.

24 9516. (a) A person or entity may request an audit in order to
25 determine whether a fee described in Section 9512 exceeds the
26 amount reasonably necessary to cover the costs to the utility of
27 the use of a utility pole or support structure, consistent with Section
28 9512. If a person or entity makes that request, the local publicly
29 owned electric utility shall retain an independent auditor to conduct
30 an audit to determine whether the fee is reasonable, unless an audit
31 has been performed for the same fee within the previous 12 months.
32 *The individual or entity requesting the audit shall pay for the direct*
33 *costs associated with an audit made pursuant to this subdivision.*

34 (b) To the extent that the audit determines that the amount of
35 the fee does not meet the requirements of this part, the local
36 publicly owned electric utility shall adjust the fee accordingly.

37 9517. (a) This part does not limit the authority of a local
38 publicly owned electric utility to ensure compliance with all
39 applicable provisions of law in determining whether to approve
40 or disapprove use of a utility pole or support structure.

1 ***(b) The use of a utility pole or support structure by a cable***
2 ***television corporation, video service provider, or telephone***
3 ***corporation shall comply with Public Utilities Commission General***
4 ***Order 95 and all other applicable provisions of law.***

5 SEC. 3. If the Commission on State Mandates determines that
6 this act contains costs mandated by the state, reimbursement to
7 local agencies and school districts for those costs shall be made
8 pursuant to Part 7 (commencing with Section 17500) of Division
9 4 of Title 2 of the Government Code.

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