

AMENDED IN ASSEMBLY APRIL 28, 2011

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 appropriate space and 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 appropriate space and capacity on and in those
17 structures to cable television corporations, video service providers,
18 and telephone corporations under reasonable rates, terms, and
19 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 (c) *The Legislature further finds and declares that local publicly*
28 *owned electric utilities should provide access to utility poles and*

1 *support structures with a recovery of actual costs without*
 2 *subsidizing for-profit cable television corporations, video service*
 3 *providers, and telephone corporations.*

4 9511. (a) (1) A local publicly owned electric utility shall make
 5 appropriate space and capacity on and in a utility pole and support
 6 structure owned or controlled by the local publicly owned electric
 7 utility available for use by a cable television corporation, video
 8 service provider, or telephone corporation pursuant to reasonable
 9 terms and conditions. Rates, terms, and conditions that are specified
 10 in a contract executed before January 1, 2012, shall remain valid
 11 until the contract, rate, term, or condition expires or is terminated
 12 according to its terms, or until the parties to the agreement agree
 13 to change the rate, term, or condition. If an annual fee is included
 14 in a contract executed before January 1, 2012, but the amount of
 15 the fee is left unspecified, the requirements of Section 9512 apply.

16 (2) A local publicly owned electric utility shall respond to a
 17 request for use by a cable television corporation, video service
 18 provider, or telephone corporation of a utility pole or support
 19 structure owned or controlled by the local publicly owned electric
 20 utility within 45 days of the request, or 60 days if the request is to
 21 attach to over 300 poles. If the request is denied, the local publicly
 22 owned electric utility shall provide in the response the reason for
 23 the denial and the remedy to gain access to the utility pole or
 24 support structure. If a request to attach is accepted, the local
 25 publicly owned electric utility, within 14 days after acceptance of
 26 the request, shall provide a cost estimate, based on actual cost, for
 27 any necessary make-ready work required to accommodate the
 28 attachment. The requesting party shall accept or reject the
 29 make-ready cost estimate within 14 days. Within 60 days of
 30 acceptance of the cost estimate, or within 105 days in the case of
 31 a request to attach to over 300 poles, the local publicly owned
 32 electric utility shall notify any existing attachers that make-ready
 33 work for a new attacher needs to be performed and the attachers
 34 shall move their attachments. Contractors authorized by the local
 35 publicly owned electric utility may complete make-ready work
 36 without the consent of the existing attachers, if the existing
 37 attachers fail to move their attachments by the end of the
 38 make-ready timeline requirements specified in this paragraph.

39 (3) *The timelines described in paragraph (2) may be extended*
 40 *under special circumstances upon agreement of the local publicly*

1 *owned electric utility and the cable television corporation, video*
2 *service provider, or telephone corporation.*

3 (4) *A local publicly owned electric utility may deny an*
4 *application for use of a utility pole or support structure because*
5 *of insufficient capacity or safety, reliability, or engineering*
6 *concerns.*

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

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

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

18 9512. (a) (1) An annual fee charged by a local publicly owned
19 electric utility for the use of a utility pole by a cable television
20 corporation, video service provider, or telephone corporation shall
21 not exceed an amount determined by multiplying the percentage
22 of the total usable space that would be occupied by the attachment
23 by the annual costs of ownership of the pole and its supporting
24 anchor. As used in this paragraph and paragraph (2), “usable space”
25 means the space above the minimum grade level that can be used
26 for the attachment of wires, cables, and associated equipment. It
27 shall be presumed, subject to factual rebuttal, that a single
28 attachment occupies one foot of usable space and that an average
29 utility pole contains 13.5 feet of usable space.

30 (2) An annual fee charged by a local publicly owned electric
31 utility for use of a support structure by a cable television
32 corporation, video service provider, or telephone corporation shall
33 not exceed the local publicly owned electric utility’s annual costs
34 of ownership of the percentage of the volume of the capacity of
35 the structure rendered unusable by the equipment of the cable
36 television corporation, video service provider, or telephone
37 corporation.

38 (3) As used in this subdivision, the “annual costs of ownership”
39 is the sum of the annual capital costs and annual operation costs
40 of the pole or support structure, which shall be the average costs

1 of all similar utility poles or structures owned or controlled by the
2 local publicly owned electric utility. The basis for the computation
3 of annual capital costs shall be historical capital costs less
4 depreciation. The accounting upon which the historical capital
5 costs are determined shall include a credit for all reimbursed capital
6 costs. Depreciation shall be based upon the average service life of
7 the utility pole or support structure. "Annual cost of ownership"
8 does not include costs for any property not necessary for use by
9 the cable television corporation, video service provider, or
10 telephone corporation.

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

16 (c) If the cable television corporation, video service provider,
17 or telephone corporation requests a rearrangement of the utility
18 pole or support structure, and the local publicly owned electric
19 utility has the authority to levy fees as described in Section 9511,
20 the local publicly owned electric utility may charge a one-time
21 reimbursement fee for the actual costs incurred for the
22 rearrangement.

23 (d) A jointly owned pole, including the cost of the pole on the
24 books of the local publicly owned electric utility, is not included
25 within the requirements of this part, if a joint owner other than the
26 local publicly owned electric utility has the sole control of the
27 space that would be used by the cable television corporation, video
28 service provider, or telephone corporation.

29 9513. (a) (1) Before adopting, or increasing, a fee described
30 in Section 9512, or adopting or changing the terms and conditions
31 of access subject to this part, the local publicly owned electric
32 utility shall hold at least one open and public meeting as part of a
33 regularly scheduled meeting, at which time oral or written
34 presentations relating to the fee or term or condition of access may
35 be made.

36 (2) At least 14 days before the meeting described in paragraph
37 (1), the local publicly owned electric utility shall mail notice of
38 the time and place of the meeting, including a general explanation
39 of the matter to be considered, and a statement that the data
40 required by paragraph (3) is available, to a person or entity who

1 files a written request with the local publicly owned electric utility
2 for mailed notice of the meeting.

3 (3) At least 10 days before the meeting described in paragraph
4 (1), the local publicly owned electric utility shall make available
5 to the public data indicating the cost, or estimated cost, to make
6 utility poles and support structures available for use by a cable
7 television corporation, video service provider, or telephone
8 corporation, if adopting or increasing a fee, and shall make
9 available data and rationale for adopting or changing the terms
10 and conditions of access, if adopting or changing the terms and
11 conditions of access.

12 (b) (1) An action by a local publicly owned electric utility to
13 adopt, or increase, a fee described in Section 9512, or adopt or
14 change the terms and conditions of access subject to this part, shall
15 be taken solely by an ordinance or resolution adopted by the
16 legislative body of the local publicly owned electric utility. The
17 legislative body of the local publicly owned electric utility shall
18 not delegate the authority to adopt or increase the fee or term or
19 condition of access to another entity or board.

20 (2) The legislative body of the local publicly owned electric
21 utility shall approve the ordinance or resolution to adopt or increase
22 the fee, or adopt or change the terms and conditions of access
23 subject to this part, at a subsequent open and public meeting as
24 part of a regularly scheduled meeting, no earlier than 30 days after
25 the initial public meeting described in subdivision (a).

26 (3) An action adopting a fee or increasing a fee, or adopting or
27 changing the terms and conditions of access subject to this part,
28 pursuant to this section shall be effective no sooner than 60 days
29 following the final action on the adoption of the fee or fee increase
30 or adoption or change in the terms and conditions of access.

31 9514. (a) Any person or entity may protest the adoption or
32 imposition of, or increase of, a fee described in Section 9512, or
33 adoption or change in the terms and conditions of access subject
34 to this part, by serving written notice to the governing body of the
35 local publicly owned electric utility within 30 days of the action
36 protested. The written notice shall contain a statement informing
37 the governing body of the factual elements of the dispute and the
38 legal theory forming the basis for the protest.

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

4 9515. (a) A judicial action or proceeding to attack, review, set
5 aside, void, or annul an ordinance, resolution, or motion adopting,
6 or increasing, a fee described in Section 9512, or adopting or
7 changing the terms and conditions of access subject to this part,
8 shall be commenced within 120 days of the effective date of the
9 ordinance, resolution, or motion.

10 (b) If an ordinance, resolution, or motion provides for an
11 automatic adjustment of a fee, and the automatic adjustment results
12 in an increase in the amount of a fee, a judicial action or proceeding
13 to attack, review, set aside, void, or annul the increase shall be
14 commenced within 120 days of the effective date of the increase.

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

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

22 (1) The fee or requirement will be directly imposed on the
23 person or entity as a condition for the use of a utility pole or support
24 structure.

25 (2) At least 30 days before initiating the action or proceeding,
26 the person or entity requests the local publicly owned electric
27 utility to provide a copy of documents that purport to establish that
28 the fee does not exceed the amount reasonably necessary to cover
29 the cost of the use of the utility pole or support structure, consistent
30 with Section 9512, or that the term and conditions of access or
31 change to the terms and conditions of access are reasonable. The
32 local publicly owned electric utility may charge a fee for the direct
33 costs of copying the documents requested pursuant to this
34 paragraph.

35 9516. (a) A person or entity may request an audit in order to
36 determine whether a fee described in Section 9512 exceeds the
37 amount reasonably necessary to cover the costs to the utility of
38 the use of a utility pole or support structure, consistent with Section
39 9512. If a person or entity makes that request, the local publicly
40 owned electric utility shall retain an independent auditor to conduct

1 an audit to determine whether the fee is reasonable, unless an audit
2 has been performed for the same fee within the previous 12 months.
3 The individual or entity requesting the audit shall pay for the direct
4 costs associated with an audit made pursuant to this subdivision.

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

8 9517. (a) This part does not limit the authority of a local
9 publicly owned electric utility to ensure compliance with all
10 applicable provisions of law in determining whether to approve
11 or disapprove use of a utility pole or support structure.

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

16 SEC. 3. If the Commission on State Mandates determines that
17 this act contains costs mandated by the state, reimbursement to
18 local agencies and school districts for those costs shall be made
19 pursuant to Part 7 (commencing with Section 17500) of Division
20 4 of Title 2 of the Government Code.