

AMENDED IN ASSEMBLY JUNE 1, 2011

AMENDED IN ASSEMBLY MAY 11, 2011

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.

(c) The Legislature further finds and declares that local publicly owned electric utilities should provide access to utility poles and support structures with a recovery of actual costs without subsidizing for-profit cable television corporations, video service providers, and telephone corporations.

9510.5. *As used in this part, “utility pole” means an electricity or telephone pole, but does not include a street light pole or an electricity pole used solely for the transmission of electricity at 50 kilovolts or higher and not intended for distribution of communications signals or electricity at lower voltages. “Street light pole” means a pole, arm, or fixture used primarily for street, pedestrian, or security lighting.*

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

(2) A local publicly owned electric utility shall respond to a request for use by a cable television corporation, video service provider, or telephone corporation of a utility pole or support structure owned or controlled by the local publicly owned electric utility within 45 days of the *date of receipt of the request*, or 60 days if the request is to attach to over 300 poles. If the request is denied, the local publicly owned electric utility shall provide in the response the reason for the denial and the remedy to gain access to the utility pole or support structure. If a request to attach is accepted, the local publicly owned electric utility, within 14 days after acceptance of the request, shall provide a cost estimate, based on actual cost, for any necessary make-ready work required to accommodate the attachment. The requesting party shall accept or reject the make-ready cost estimate within 14 days. Within 60 days of acceptance of the cost estimate, ~~or within 105 days in the~~

1 ~~case of a request to attach to over 300 poles, the local publicly~~
2 ~~owned electric utility shall notify any existing *third-party* attachers~~
3 ~~that make-ready work for a new attacher needs to be performed~~
4 ~~and the attachers shall move their attachments performed. The~~
5 ~~requesting party shall have the responsibility to coordinate with~~
6 ~~third-party existing attachers for make-ready work to be completed.~~
7 *All parties shall complete all make-ready work within 60 days of*
8 *the notice, or within 105 days in the case of a request to attach to*
9 *over 300 poles. Contractors authorized by the local publicly owned*
10 *electric utility may complete make-ready work without the consent*
11 *of the existing attachers, if the existing attachers fail to move their*
12 *attachments by the end of the make-ready timeline requirements*
13 *specified in this paragraph.*

14 (3) The timelines described in paragraph (2) may be extended
15 under special circumstances upon agreement of the local publicly
16 owned electric utility and the cable television corporation, video
17 service provider, or telephone corporation.

18 (4) A local publicly owned electric utility may deny an
19 application for use of a utility pole or support structure because of
20 insufficient capacity or safety, reliability, or engineering concerns.
21 *In denying an application, a local publicly owned electric utility*
22 *may also take into account the manner in which a request from a*
23 *cable television corporation, video service provider, or telephone*
24 *corporation under this part could impact an approved project for*
25 *future use by the local publicly owned electric utility of its utility*
26 *poles or support structures for delivery of its core utility service.*

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

31 (c) (1) A local publicly owned electric utility may require an
32 additional one-time charge equal to three years of the annual fee
33 described in Section 9512, for attachments *reasonably shown to*
34 *have been* made without authorization that are discovered on or
35 after January 1, 2012.

36 (2) A local publicly owned electric utility may remove an
37 attachment made without authorization, if all of the following
38 conditions are met:

39 (A) The owner of the attachment fails to pay the charge
40 described in paragraph (1), if that charge is applicable.

1 (B) The owner of the attachment does not seek approval to
2 attach pursuant to this part within a reasonable period of time.

3 (C) The owner of the attachment does not contest that the
4 attachment was made without authorization.

5 (3) An attachment of a service drop wire is not made without
6 authorization for the purposes of this subdivision, if the owner of
7 the attachment seeks approval to attach pursuant to this part within
8 45 days of the attachment.

9 (d) This part does not grant additional authority to a local
10 publicly owned electric utility to impose a fee that is not otherwise
11 authorized by law. *Nothing in this part shall be construed to*
12 *prohibit a local publicly owned electric utility from requiring a*
13 *one-time fee to process a request for attachment, if the one-time*
14 *fee does not exceed the actual cost of processing the request.*

15 (e) *In the event that it becomes necessary for the local publicly*
16 *owned electric utility to use space or capacity on or in a support*
17 *structure occupied by the cable television corporation, video*
18 *service provider, or telephone corporation's equipment, the cable*
19 *television corporation, video service provider, or telephone*
20 *corporation shall either pay all costs for rearrangements necessary*
21 *to maintain the pole attachment or remove its equipment at its own*
22 *expense.*

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

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

1 television corporation, video service provider, or telephone
2 corporation.

3 (3) As used in this subdivision, the “annual costs of ownership”
4 is the sum of the annual capital costs and annual operation costs
5 of the pole or support structure, which shall be the average costs
6 of all similar utility poles or structures owned or controlled by the
7 local publicly owned electric utility. The basis for the computation
8 of annual capital costs shall be historical capital costs less
9 depreciation. The accounting upon which the historical capital
10 costs are determined shall include a credit for all reimbursed capital
11 costs. Depreciation shall be based upon the average service life of
12 the utility pole or support structure. “Annual cost of ownership”
13 does not include costs for any property not necessary for use by
14 the cable television corporation, video service provider, or
15 telephone corporation.

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

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

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

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

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

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

17 (b) (1) An action by a local publicly owned electric utility to
18 adopt, or increase, a fee described in Section 9512, or adopt or
19 change the terms and conditions of access subject to this part, shall
20 be taken solely by an ordinance or resolution adopted, or by a
21 contract approved, by the legislative body of the local publicly
22 owned electric utility. The legislative body of the local publicly
23 owned electric utility shall not delegate the authority to adopt or
24 increase the fee or term or condition of access to another entity or
25 board. The legislative body of the local publicly owned electric
26 utility shall ensure that the customers of the local publicly owned
27 electric utility and the customers of the cable television corporation,
28 video service provider, or telephone corporation are not subsidized
29 by the rates, terms, and conditions proposed for access pursuant
30 to this part.

31 (2) The legislative body of the local publicly owned electric
32 utility shall approve the ordinance or resolution or contract to adopt
33 or increase the fee, or adopt or change the terms and conditions of
34 access subject to this part, at a subsequent open and public meeting
35 as part of a regularly scheduled meeting, no earlier than 30 days
36 after the initial public meeting described in subdivision (a).

37 (3) An action adopting a fee or increasing a fee, or adopting or
38 changing the terms and conditions of access subject to this part,
39 pursuant to this section shall be effective no sooner than 60 days

1 following the final action on the adoption of the fee or fee increase
2 or adoption or change in the terms and conditions of access.

3 (c) This section does not apply to a contract extension *agreed*
4 *to by all of the parties to the contract*, if the terms, conditions, or
5 rates described in the contract are not changed.

6 9514. (a) Any person or entity may protest the adoption or
7 imposition of, or increase of, a fee described in Section 9512, or
8 adoption or change in the terms and conditions of access subject
9 to this part, by serving written notice to the governing body of the
10 local publicly owned electric utility within 30 days of the action
11 ~~protested taken~~. The written notice shall contain a statement
12 informing the governing body of the factual elements of the dispute
13 and the legal theory forming the basis for the protest.

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

17 9515. (a) A judicial action or proceeding to attack, review, set
18 aside, void, or annul an ordinance, resolution, ~~or motion~~ *motion*,
19 *or contract* adopting, or increasing, a fee described in Section
20 9512, or adopting or changing the terms and conditions of access
21 subject to this part, *or an automatic adjustment that results in an*
22 *increase in the amount of a fee described in Section 9512*, shall
23 be commenced within 120 days of the effective date of the
24 ordinance, resolution, ~~or motion~~ *motion, contract, or automatic*
25 *adjustment*.

26 ~~(b) If an ordinance, resolution, motion, or contract provides for~~
27 ~~an automatic adjustment of a fee, and the automatic adjustment~~
28 ~~results in an increase in the amount of a fee, a judicial action or~~
29 ~~proceeding to attack, review, set aside, void, or annul the increase~~
30 ~~shall be commenced within 120 days of the effective date of the~~
31 ~~increase.~~

32 (c)

33 (b) An action by a local publicly owned electric utility or
34 interested person shall be brought pursuant to Chapter 9
35 (commencing with Section 860) of Title 10 of Part 2 of the Code
36 of Civil Procedure.

37 (d)

38 (c) A person or entity shall not initiate an action or proceeding
39 pursuant to subdivision (a) unless both of the following
40 requirements are met:

1 (1) The fee or requirement will be directly imposed on the
2 person or entity as a condition for the use of a utility pole or support
3 structure, *or the entity is a trade association that represents that*
4 *person or entity.*

5 (2) At least 30 days before initiating the action or proceeding,
6 the person or entity, *or trade association representing that person*
7 *or entity,* requests the local publicly owned electric utility to
8 provide a copy of documents that purport to establish that the fee
9 does not exceed the amount reasonably necessary to cover the cost
10 of the use of the utility pole or support structure, consistent with
11 Section 9512, or that the term and conditions of access or change
12 to the terms and conditions of access are reasonable. The local
13 publicly owned electric utility may charge a fee for the direct costs
14 of copying the documents requested pursuant to this paragraph.

15 (d) *An action to enforce this part shall be brought in a court of*
16 *competent jurisdiction.*

17 9516. (a) A person or entity, *or trade association representing*
18 *that person or entity,* may request an audit in order to determine
19 whether a fee described in Section 9512 exceeds the amount
20 reasonably necessary to cover the costs to the utility of the use of
21 a utility pole or support structure, consistent with Section 9512. ~~If~~
22 ~~a person or entity makes that request, the local publicly owned~~
23 ~~electric utility~~ *A person or entity making that request* shall retain
24 an independent auditor to conduct an audit to determine whether
25 the fee is reasonable, unless an audit has been performed for the
26 same fee within the previous 12 months. The individual or entity
27 requesting the audit shall pay for the direct costs associated with
28 an audit made pursuant to this subdivision.

29 (b) *A person or entity, or trade association representing a*
30 *person or entity, shall not request an audit unless the fee is directly*
31 *imposed on the person or entity, or on a member of the trade*
32 *association, as a condition for the use of the utility pole or support*
33 *structure.*

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

38 9517. (a) This part does not limit the authority of a local
39 publicly owned electric utility to ensure compliance with all

1 applicable provisions of law in determining whether to approve
2 or disapprove use of a utility pole or support structure.

3 (b) The use of a utility pole or support structure by a cable
4 television corporation, video service provider, or telephone
5 corporation shall comply with Public Utilities Commission General
6 ~~Order 95~~ *Orders 95 and 128* and all other applicable provisions
7 of law.

8 SEC. 3. If the Commission on State Mandates determines that
9 this act contains costs mandated by the state, reimbursement to
10 local agencies and school districts for those costs shall be made
11 pursuant to Part 7 (commencing with Section 17500) of Division
12 4 of Title 2 of the Government Code.