

AMENDED IN SENATE JUNE 28, 2011

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**

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**Introduced by Assembly Member Buchanan**

February 18, 2011

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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, *municipal utility districts*, 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:~~

~~(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 no reimbursement is required by this act for a specified reason.~~

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,

1 and telephone corporations under reasonable rates, terms, and  
2 conditions.

3 (b) The Legislature further finds and declares that the oversight  
4 of fees and other requirements imposed by local publicly owned  
5 electric utilities as a condition of providing the space or capacity  
6 described in subdivision (a) is a matter of statewide interest and  
7 concern. Therefore, it is the intent of the Legislature that this part  
8 supersedes all conflicting local laws and this part shall apply in  
9 charter cities.

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

15 (d) *Nothing in this part alters the ability of a local publicly*  
16 *owned electric utility to determine who performs work for the local*  
17 *publicly owned electric utility on its facilities.*

18 9510.5. As used in this part, “utility pole” means an electricity  
19 or telephone pole, but does not include a street light pole or an  
20 electricity pole used solely for the transmission of electricity at 50  
21 kilovolts or higher and not intended for distribution of  
22 communications signals or electricity at lower voltages. “Street  
23 light pole” means a pole, arm, or fixture used primarily for street,  
24 pedestrian, or security lighting.

25 9511. (a) (1) A local publicly owned electric utility shall make  
26 appropriate space and capacity on and in a utility pole and support  
27 structure owned or controlled by the local publicly owned electric  
28 utility available for use by a cable television corporation, video  
29 service provider, or telephone corporation pursuant to reasonable  
30 terms and conditions. Rates, terms, and conditions that are specified  
31 in a contract executed before January 1, 2012, shall remain valid  
32 until the contract, rate, term, or condition expires or is terminated  
33 according to its terms by one of the parties. If an annual fee is  
34 included in a contract executed before January 1, 2012, but the  
35 amount of the fee is left unspecified, the requirements of Section  
36 9512 apply.

37 (2) A local publicly owned electric utility shall respond to a  
38 request for use by a cable television corporation, video service  
39 provider, or telephone corporation of a utility pole or support  
40 structure owned or controlled by the local publicly owned electric

1 utility within 45 days of the date of receipt of the request, or 60  
2 days if the request is to attach to over 300 poles. If the request is  
3 denied, the local publicly owned electric utility shall provide in  
4 the response the reason for the denial and the remedy to gain access  
5 to the utility pole or support structure. If a request to attach is  
6 accepted, the local publicly owned electric utility, within 14 days  
7 after acceptance of the request, shall provide a cost estimate, based  
8 on actual cost, for any necessary make-ready work required to  
9 accommodate the attachment. The requesting party shall accept  
10 or reject the make-ready cost estimate within 14 days. Within 60  
11 days of acceptance of the cost estimate, the local publicly owned  
12 electric utility shall notify any existing third-party attachers that  
13 make-ready work for a new attacher needs to be performed. The  
14 requesting party shall have the responsibility to coordinate with  
15 third-party existing attachers for make-ready work to be completed.  
16 All parties shall complete all make-ready work within 60 days of  
17 the notice, or within 105 days in the case of a request to attach to  
18 over 300 poles. ~~Contractors authorized by the~~ The local publicly  
19 owned electric utility may complete make-ready work without the  
20 consent of the existing attachers, if the existing attachers fail to  
21 move their attachments by the end of the make-ready timeline  
22 requirements specified in this paragraph.

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

27 (4) A local publicly owned electric utility may deny an  
28 application for use of a utility pole or support structure because of  
29 insufficient capacity or safety, reliability, or engineering concerns.  
30 In denying an application, a local publicly owned electric utility  
31 may also take into account the manner in which a request from a  
32 cable television corporation, video service provider, or telephone  
33 corporation under this part could impact an approved project for  
34 future use by the local publicly owned electric utility of its utility  
35 poles or support structures for delivery of its core utility service.

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

1 (c) *The governing body of the local publicly owned electric*  
2 *utility shall determine the fee pursuant to Section 9512.*

3 ~~(e)~~

4 (d) (1) A local publicly owned electric utility may require an  
5 additional one-time charge equal to three years of the annual fee  
6 described in Section 9512, for attachments reasonably shown to  
7 have been made without authorization that are discovered on or  
8 after January 1, 2012.

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

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

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

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

18 (3) An attachment of a service drop wire is not made without  
19 authorization for the purposes of this subdivision, if the owner of  
20 the attachment seeks approval to attach pursuant to this part within  
21 45 days of the attachment.

22 ~~(d)~~

23 (e) This part does not grant additional authority to a local  
24 publicly owned electric utility to impose a fee that is not otherwise  
25 authorized by law. Nothing in this part shall be construed to  
26 prohibit a local publicly owned electric utility from requiring a  
27 one-time fee to process a request for attachment, if the one-time  
28 fee does not exceed the actual cost of processing the request.

29 ~~(e)~~

30 (f) In the event that it becomes necessary for the local publicly  
31 owned electric utility to use space or capacity on or in a support  
32 structure occupied by the cable television corporation, video service  
33 provider, or telephone corporation's equipment, the cable television  
34 corporation, video service provider, or telephone corporation shall  
35 either pay all costs for rearrangements necessary to maintain the  
36 pole attachment or remove its equipment at its own expense.

37 9512. (a) (1) An annual fee charged by a local publicly owned  
38 electric utility for the use of a utility pole by a cable television  
39 corporation, video service provider, or telephone corporation shall  
40 not exceed an amount determined by multiplying the percentage

1 of the total usable space that would be occupied by the attachment  
2 by the annual costs of ownership of the pole and its supporting  
3 anchor. As used in this paragraph and paragraph (2), “usable space”  
4 means the space above the minimum grade level that can be used  
5 for the attachment of wires, cables, and associated equipment. It  
6 shall be presumed, subject to factual rebuttal, that a single  
7 attachment occupies one foot of usable space and that an average  
8 utility pole contains 13.5 feet of usable space.

9 (2) An annual fee charged by a local publicly owned electric  
10 utility for use of a support structure by a cable television  
11 corporation, video service provider, or telephone corporation shall  
12 not exceed the local publicly owned electric utility’s annual costs  
13 of ownership of the percentage of the volume of the capacity of  
14 the structure rendered unusable by the equipment of the cable  
15 television corporation, video service provider, or telephone  
16 corporation.

17 (3) As used in this subdivision, the “annual costs of ownership”  
18 is the sum of the annual capital costs and annual operation costs  
19 of the pole or support structure, which shall be the average costs  
20 of all similar utility poles or structures owned or controlled by the  
21 local publicly owned electric utility. The basis for the computation  
22 of annual capital costs shall be historical capital costs less  
23 depreciation. The accounting upon which the historical capital  
24 costs are determined shall include a credit for all reimbursed capital  
25 costs. Depreciation shall be based upon the average service life of  
26 the utility pole or support structure. “Annual cost of ownership”  
27 does not include costs for any property not necessary for use by  
28 the cable television corporation, video service provider, or  
29 telephone corporation.

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

35 (c) If the cable television corporation, video service provider,  
36 or telephone corporation requests a rearrangement of the utility  
37 pole or support structure, and the local publicly owned electric  
38 utility has the authority to levy fees as described in Section 9511,  
39 the local publicly owned electric utility may charge a one-time

1 reimbursement fee for the actual costs incurred for the  
2 rearrangement.

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

9 9513. (a) (1) Before adopting, or increasing, a fee described  
10 in Section 9512, or adopting or changing the terms and conditions  
11 of access subject to this part, the local publicly owned electric  
12 utility shall hold at least one open and public meeting as part of a  
13 regularly scheduled meeting, at which time oral or written  
14 presentations relating to the fee or term or condition of access may  
15 be made.

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

23 (3) At least 10 days before the meeting described in paragraph  
24 (1), the local publicly owned electric utility shall make available  
25 to the public data indicating the cost, or estimated cost, to make  
26 utility poles and support structures available for use by a cable  
27 television corporation, video service provider, or telephone  
28 corporation, if adopting or increasing a fee, and shall make  
29 available data and rationale for adopting or changing the terms  
30 and conditions of access, if adopting or changing the terms and  
31 conditions of access.

32 (b) (1) An action by a local publicly owned electric utility to  
33 adopt, or increase, a fee described in Section 9512, or adopt or  
34 change the terms and conditions of access subject to this part, shall  
35 be taken solely by an ordinance or resolution adopted, or by a  
36 contract approved, by the legislative body of the local publicly  
37 owned electric utility. The legislative body of the local publicly  
38 owned electric utility shall not delegate the authority to adopt or  
39 increase the fee or term or condition of access to another entity or  
40 board. The legislative body of the local publicly owned electric

1 utility shall ensure that the customers of the local publicly owned  
2 electric utility and the customers of the cable television corporation,  
3 video service provider, or telephone corporation are not subsidized  
4 by the rates, terms, and conditions proposed for access pursuant  
5 to this part.

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

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

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

20 9514. (a) Any person or entity may protest the adoption or  
21 imposition of, or increase of, a fee described in Section 9512, or  
22 adoption or change in the terms and conditions of access subject  
23 to this part, by serving written notice to the governing body of the  
24 local publicly owned electric utility within 30 days of the action  
25 taken. The written notice shall contain a statement informing the  
26 governing body of the factual elements of the dispute and the legal  
27 theory forming the basis for the protest.

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

31 9515. (a) A judicial action or proceeding to attack, review, set  
32 aside, void, or annul an ordinance, resolution, motion, or contract  
33 adopting, or increasing, a fee described in Section 9512, or  
34 adopting or changing the terms and conditions of access subject  
35 to this part, or an automatic adjustment that results in an increase  
36 in the amount of a fee described in Section 9512, shall be  
37 commenced within 120 days of the effective date of the ordinance,  
38 resolution, motion, contract, or automatic adjustment.

39 (b) An action by a local publicly owned electric utility or  
40 interested person shall be brought pursuant to Chapter 9

1 (commencing with Section 860) of Title 10 of Part 2 of the Code  
2 of Civil Procedure.

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

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

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

20 (d) An action to enforce this part shall be brought in a court of  
21 competent jurisdiction.

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

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

38 (c) To the extent that the audit determines that the amount of  
39 the fee does not meet the requirements of this part, the local  
40 publicly owned electric utility shall adjust the fee accordingly.

1 9517. (a) This part does not limit the authority of a local  
2 publicly owned electric utility to ensure compliance with all  
3 applicable provisions of law in determining whether to approve  
4 or disapprove use of a utility pole or support structure.

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

9 ~~SEC. 3. If the Commission on State Mandates determines that~~  
10 ~~this act contains costs mandated by the state, reimbursement to~~  
11 ~~local agencies and school districts for those costs shall be made~~  
12 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~  
13 ~~4 of Title 2 of the Government Code.~~

14 *SEC. 3. No reimbursement is required by this act pursuant to*  
15 *Section 6 of Article XIII B of the California Constitution because*  
16 *a local agency or school district has the authority to levy service*  
17 *charges, fees, or assessments sufficient to pay for the program or*  
18 *level of service mandated by this act, within the meaning of Section*  
19 *17556 of the Government Code.*