

Assembly Bill No. 1027

Passed the Assembly August 31, 2011

Chief Clerk of the Assembly

Passed the Senate August 29, 2011

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

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

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

PART 1. LOW-INCOME WEATHERIZATION PROGRAMS

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

PART 2. UTILITY POLES AND SUPPORT STRUCTURES

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

(b) The Legislature further finds and declares that the oversight of fees and other requirements imposed by local publicly owned electric utilities as a condition of providing the space or capacity described in subdivision (a) is a matter of statewide interest and concern. Therefore, it is the intent of the Legislature that this part supersedes all conflicting local laws and this part shall apply in 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, the following terms have the following meanings:

(a) “Communications service provider” means a cable television corporation, video service provider, or telephone corporation.

(b) “Governing body” means the governing body of a local publicly owned electric utility, including, where applicable, a board appointed by a city council.

(c) “Street light pole” means a pole, arm, or fixture used primarily for street, pedestrian, or security lighting.

(d) “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.

9511. (a) 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 communications service provider 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 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.

(b) (1) A local publicly owned electric utility shall respond to a request for use by a communications service provider 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, the local publicly owned electric utility shall notify any existing third-party attachers that make-ready work for a new attacher needs to be performed. The requesting party shall have the responsibility to coordinate with third-party existing attachers for make-ready work to be completed. All parties shall complete all make-ready work within 60 days of the notice, or within 105 days in the case of a request to attach to over 300 poles. The local publicly owned electric utility may complete make-ready work without the consent of the existing attachers, if the existing attachers fail to move their attachments by the end of the make-ready timeline requirements specified in this paragraph.

(2) The timelines described in paragraph (1) may be extended under special circumstances upon agreement of the local publicly owned electric utility and the communications service provider.

(c) A local publicly owned electric utility may deny an application for use of a utility pole or support structure because of insufficient capacity or safety, reliability, or engineering concerns. In denying an application, a local publicly owned electric utility may also take into account the manner in which a request from a communications service provider under this part could impact an approved project for future use by the local publicly owned electric utility of its utility poles or support structures for delivery of its core utility service.

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

9511.5. (a) If a local publicly owned electric utility has the authority pursuant to other law to impose a fee to provide the use described in Section 9511, that fee shall be adopted and levied consistent with the requirements of this part.

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

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

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

(2) An annual fee charged by a local publicly owned electric utility for use of a support structure by a communications service provider shall not exceed the local publicly owned electric utility’s annual costs of ownership of the percentage of the volume of the capacity of the structure rendered unusable by the equipment of the communications service provider.

(3) As used in this subdivision, the “annual costs of ownership” is the sum of the annual capital costs and annual operation costs of the pole or support structure, which shall be the average costs of all similar utility poles or structures owned or controlled by the local publicly owned electric utility. The basis for the computation of annual capital costs shall be historical capital costs less depreciation. The accounting upon which the historical capital costs are determined shall include a credit for all reimbursed capital costs. Depreciation shall be based upon the average service life of the utility pole or support structure. “Annual cost of ownership” does not include costs for any property not necessary for use by the communications service provider.

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

(c) A jointly owned pole is not included within the requirements of this section, if a joint owner other than the local publicly owned electric utility has control of access to the space that would be used by the communications service provider.

9513. (a) A local publicly owned electric utility may require an additional one-time charge equal to three years of the annual fee described in Section 9512, for attachments reasonably shown to have been made without authorization that are discovered on or after January 1, 2012.

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

(1) The owner of the attachment fails to pay the charge described in subdivision (a), if that charge is applicable.

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

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

(c) An attachment of a service drop wire is not made without authorization for the purposes of this section, if the owner of the attachment seeks approval to attach pursuant to this part within 45 days of the attachment.

9514. Nothing in this part shall be construed to prohibit a local publicly owned electric utility from requiring a one-time fee to process a request for attachment, if the one-time fee does not exceed the actual cost of processing the request.

9515. (a) In the event that it becomes necessary for the local publicly owned electric utility to use space or capacity on or in a support structure occupied by the communications service provider's equipment, the communications service provider shall either pay all costs for rearrangements necessary to maintain the pole attachment or remove its equipment at its own expense.

(b) If the communications service provider requests a rearrangement of the utility pole or support structure, and the local publicly owned electric utility has the authority to levy fees as described in Section 9511.5, the local publicly owned electric utility may charge a one-time reimbursement fee for the actual costs incurred for the rearrangement.

9516. (a) (1) Before adopting, or increasing, a fee described in this part, or adopting or changing the terms and conditions of access subject to this part, the local publicly owned electric utility shall hold at least one open and public meeting as part of a regularly scheduled meeting, at which time oral or written presentations relating to the fee or term or condition of access may be made.

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

(3) At least 10 days before the meeting described in paragraph (1), the local publicly owned electric utility shall make available to the public data indicating the cost, or estimated cost, to make utility poles and support structures available for use by a communications service provider, if adopting or increasing a fee, and shall make available data and rationale for adopting or changing the terms and conditions of access, if adopting or changing the terms and conditions of access.

(b) (1) An action by a local publicly owned electric utility to adopt, or increase, a fee described in this part, or adopt or change

the terms and conditions of access subject to this part, shall be taken solely by an ordinance or resolution adopted, or by a contract approved, by the governing body of the local publicly owned electric utility. The governing body of the local publicly owned electric utility shall not delegate the authority to adopt or increase the fee or term or condition of access to another entity or board or an official or employee of the board. This subdivision does not restrict a city council's existing authority over a governing body appointed by the city council. The governing body of the local publicly owned electric utility shall ensure that the customers of the local publicly owned electric utility and the customers of the communications service provider are not subsidized by the rates, terms, and conditions proposed for access pursuant to this part.

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

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

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

9517. (a) Any person or entity may protest the adoption or imposition of, or increase of, a fee described in this part, or adoption or change in the terms and conditions of access subject to this part, by serving written notice to the governing body of the local publicly owned electric utility within 30 days of the action taken. The written notice shall contain a statement informing the governing body of the factual elements of the dispute and the legal theory forming the basis for the protest.

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

9518. (a) A judicial action or proceeding to attack, review, set aside, void, or annul an ordinance, resolution, motion, or contract

adopting, or increasing, a fee described in this part, or adopting or changing the terms and conditions of access subject to this part, or an automatic adjustment that results in an increase in the amount of a fee described in this part, shall be commenced within 120 days of the effective date of the ordinance, resolution, motion, contract, or automatic adjustment.

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

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

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

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

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

9519. (a) A person or entity, or trade association representing that person or entity, may request an audit in order to determine whether a fee described in this part exceeds the amount reasonably necessary to cover the costs to the utility of the use of a utility pole or support structure, consistent with this part. A person or entity making that request shall retain an independent auditor to conduct an audit to determine whether the fee is reasonable, unless an audit has been performed for the same fee within the previous 12 months. The individual or entity requesting the audit shall pay for the direct costs associated with an audit made pursuant to this subdivision.

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

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

9520. (a) Nothing in this part alters the ability of a local publicly owned electric utility to determine who performs work for the local publicly owned electric utility on its facilities.

(b) The use of a utility pole or support structure by a communications service provider shall comply with Public Utilities Commission General Orders 95 and 128 and all other applicable provisions of law.

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

Approved _____, 2011

Governor