AMENDED IN SENATE APRIL 17, 2012

SENATE BILL No. 998

Introduced by Senator De León
(Coauthor: Senators Blakeslee and Correa)
(Coauthor: Assembly Member Solorio)

February 6, 2012

An act to add Section 2079.10b to the Civil Code, to amend Section 25402.9 of the Public Resources Code, and to amend Sections 777.1 and 779.2 of, and to add Chapter 7.6 (commencing with Section 2833) to Part 2 of Division 1 of, the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL’S DIGEST

SB 998, as amended, De León. Energy efficiency—and, renewable energy, and distributed generation on-bill repayment programs.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations and gas corporations, as defined. Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable.

This bill would require the commission to require an electrical corporation and gas corporation with 100,000 or more service connections in the state to develop and implement an on-bill repayment program, as defined, for eligible energy efficiency—and, renewable energy, and distributed generation investments, financed pursuant to an agreement with an OBR partner, as defined, on terms that the commission determines approves and ensures that the terms are just and reasonable. The bill would require the commission ensure that any on-bill repayment program approved by the commission include certain elements. The bill would authorize the commission to require the an
electrical corporation or gas corporation to treat any resulting shortfall in payment for electrical electric or gas service consistent with the rules established by the commission for a customer’s failure to pay for electrical electric or gas service. The bill would authorize the commission to order an electrical corporation or gas corporation with less than 100,000 service connections in the state to establish on-bill repayment programs based upon each utility’s individual circumstances.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill would require action by the commission to implement its requirements, a violation of the commission’s orders would impose a state-mandated local program by creating a new crime.

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. Section 2079.10b is added to the Civil Code, to read:

2079.10b. (a) On or after July 1, 2013, every seller of real property subject to an on-bill repayment obligation, pursuant to Chapter 7.6 (commencing with Section 2833) of Part 2 of Division 1 of the Public Utilities Code, shall deliver to the buyer an on-bill repayment notice and disclosure as adopted by the Public Utilities Commission pursuant to subparagraph (B) of paragraph (2) of subdivision (b) of Section 2835 of the Public Utilities Code.

(b) Upon delivery of the completed notice and disclosure form to the buyer of real property, the seller or agent is not required to provide additional information relative to the on-bill repayment contract and the information in the notice and disclosure form is adequate to inform the buyer about the existence of the energy efficiency, renewable energy, or distributed generation
improvement, the on-bill repayment program contract, and the
repayment obligation that will be assigned to and assumed by the
buyer upon beginning electric or gas service pursuant to Section
2835 of the Public Utilities Code.

SEC. 2. Section 25402.9 of the Public Resources Code is
amended to read:

25402.9. (a) On or before July 1, 1996, the commission shall
develop, adopt, and publish an informational booklet to educate
and inform homeowners, rental property owners, renters, sellers,
brokers, and the general public about the statewide home energy
rating program adopted pursuant to Section 25942.

(b) In the development of the booklet, the commission shall
consult with representatives of the Department of Real Estate, the
Department of Housing and Community Development, the Public
Utilities Commission, investor-owned and municipal utilities,
cities and counties, real estate licensees, home builders, mortgage
lenders, home appraisers and inspectors, home energy rating
organizations, contractors who provide home energy services,
consumer groups, and environmental groups.

(c) It is the intent of the Legislature that when the informational
booklet is next updated, as existing resources permit or as private
resources are made available, that the booklet include information
about home energy conservation and about on-bill repayment
programs developed and implemented pursuant to Chapter 7.6
(commencing with Section 2833) of Part 2 of Division 1 of the
Public Utilities Code. The commission may charge a fee for
the informational booklet to recover its costs under subdivision
(a) this section.

SEC. 3. Section 777.1 of the Public Utilities Code is amended
to read:

777.1. (a) If an electrical, gas, heat, or water corporation
furnishes residential service to residential occupants through a
master meter in a multiunit residential structure, mobilehome park,
or permanent residential structure in a labor camp, as defined in
Section 17008 of the Health and Safety Code, and the owner,
manager, or operator of the structure or park is listed by the
corporation as the customer of record, the corporation shall make
evory good faith effort to inform the residential occupants, by
means of a written notice posted on the door of each residential
unit at least 15 days prior to termination, when the account is in
arrears, that service will be terminated on a date specified in the
notice. If it is not reasonable or practicable to post the notice on
the door of each residential unit, the corporation shall post two
copies of the notice in each accessible common area and at each
point of access to the structure or structures. The notice shall further
inform the residential occupants that they have the right to become
customers, to whom the service will then be billed, without being
required to pay any amount which may be due on the delinquent
account. The notice also shall specify, in plain language, what the
residential occupants are required to do in order to prevent the
termination of, or to reestablish service; the estimated monthly
cost of service; the title, address, and telephone number of a
representative of the corporation who can assist the residential
occupants in continuing service; and the address and telephone
number of a qualified legal services project, as defined in Section
6213 of the Business and Professions Code, which has been
recommended by the local county bar association. The notice shall
be in English and the languages listed in Section 1632 of the Civil
Code.

(b) The corporation is not required to make service available to
the residential occupants unless each residential occupant or a
representative of the residential occupants agrees to the terms and
conditions of service and meets the requirements of law and the
corporation’s rules and tariffs. However, if one or more of the
residential occupants or the representative of the residential
occupants are willing and able to assume responsibility for
subsequent charges to the account to the satisfaction of the
corporation, or if there is a physical means, legally available to
the corporation, of selectively terminating service to those
residential occupants who have not met the requirements of the
corporation’s rules and tariffs or for whom the representative of
the residential occupants is not responsible, the corporation shall
make service available to those residential occupants who have
met those requirements or on whose behalf those requirements
have been met.

(c) If prior service for a period of time or other demonstration
of credit worthiness is a condition for establishing credit with the
corporation, residence and proof of prompt payment of rent or
other credit obligation during that period of time acceptable to the
corporation is a satisfactory equivalent.
(d) Any residential occupant who becomes a customer of the corporation pursuant to this section whose periodic payments, such as rental payments, include charges for residential electrical, gas, heat, or water service, where those charges are not separately stated, may deduct from the periodic payment each payment period all reasonable charges paid to the corporation for those services during the preceding payment period.

(e) If a corporation furnishes residential service subject to subdivision (a), the corporation shall not terminate that service in any of the following situations:

(1) During the pendency of an investigation by the corporation of a customer dispute or complaint.

(2) If the customer has been granted an extension of the period for payment of a bill.

(3) For an indebtedness owed by the customer to any other person or corporation or if the obligation represented by the delinquent account or other indebtedness was incurred with a person or corporation other than the electrical, gas, heat, or water corporation demanding payment therefor. This paragraph does not apply to an on-bill repayment obligation established pursuant to Chapter 7.6 (commencing with Section 2833) of Part 2.

(4) If a delinquent account relates to another property owned, managed, or operated by the customer.

(5) If a public health or building officer certifies that termination would result in a significant threat to the health or safety of the residential occupants or the public.

(f) Notwithstanding any other provision of law, and in addition to any other remedy provided by law, if the owner, manager, or operator, by any act or omission, directs, permits, or fails to prevent a termination of service while any residential unit receiving that service is occupied, the residential occupant or the representative of the residential occupants may commence an action for the recovery of all of the following:

(1) Reasonable costs and expenses incurred by the residential occupant or the representative of the residential occupants related to restoration of service.

(2) Actual damages related to the termination of service.

(3) Reasonable attorney’s fees of the residential occupants, the representative of the residential occupants, or each of them,
(g) Notwithstanding any other provision of law, and in addition to any other remedy provided by law, if the owner, manager, or operator, by any act or omission, directs, permits, or fails to prevent a termination of service while any residential unit receiving that service is occupied, the corporation may commence an action for the recovery of all of the following:

(1) Delinquent charges accruing prior to the expiration of the notice prescribed by subdivision (a).

(2) Reasonable costs incurred by the corporation related to the restoration of service.

(3) Reasonable attorney’s fees of the corporation incurred in the enforcement of this section or in the collection of delinquent charges, including, but not limited to, enforcement of a lien.

If the court finds that the owner, manager, or operator has paid the amount in arrears prior to termination, the court shall allow no recovery of any charges, costs, damages, expenses, or fees under this subdivision from the owner, manager, or operator.

An abstract of any money judgment entered pursuant to subdivision (f) or (g) of this section shall be recorded pursuant to Section 697.310 of the Code of Civil Procedure.

(h) No termination of service subject to this section may be effected without compliance with this section, and any service wrongfully terminated shall be restored without charge to the residential occupants or customer for the restoration of the service. In the event of a wrongful termination by the corporation, the corporation shall, in addition, be liable to the residential occupants or customer for actual damages resulting from the termination and for the costs of enforcement of this section, including, but not limited to, reasonable attorney’s fees, if the residential occupants or the representative of the residential occupants made a good faith effort to have the service continued without interruption.

(i) The commission shall adopt rules and orders necessary to implement this section and shall liberally construe this section to accomplish its purpose of ensuring that service to residential occupants is not terminated due to nonpayment by the customer unless the corporation has made every reasonable effort to continue service to the residential occupants. The rules and orders shall include, but are not limited to, reasonable penalties for a violation...
of this section, guidelines for assistance to residents in the enforcement of this section, and requirements for the notice prescribed by subdivision (a), including, but not limited to, clear wording, large and boldface type, and comprehensive instructions to ensure full notice to the resident.

(j) Nothing in this section broadens or restricts any authority of a local agency that existed prior to January 1, 1989, to adopt an ordinance protecting a residential occupant from the involuntary termination of residential public utility service.

(k) This section preempts any statute or ordinance permitting punitive damages against any owner, manager, or operator on account of an involuntary termination of residential public utility service or permitting the recovery of costs associated with the formation, maintenance, and termination of a tenants’ association.

(l) For purposes of this section, “representative of the residential occupants” does not include a tenants’ association.

SEC. 4. Section 779.2 of the Public Utilities Code is amended to read:

779.2. (a) No electrical, gas, heat, telephone, or water corporation may terminate residential service for nonpayment of any delinquent account or other indebtedness owed by the customer or subscriber to any other person or corporation or when the obligation represented by the delinquent account or other indebtedness was incurred with a person or corporation other than the electrical, gas, heat, telephone, or water corporation demanding payment therefor.

(b) (1) Subdivision (a) does not apply to a telephone corporation operating within service areas which furnishes billing services to the subscribers of a telephone corporation operating between service areas pursuant to tariffs on file with the commission providing for the furnishing of those billing services. The commission shall require that these tariffs also provide for adequate subscriber notice, review, and appeal procedures prior to any termination of service for nonpayment of a delinquent account.

(2) Subdivision (a) does not apply to any privately owned or publicly owned public utility which collects sanitation or sewerage charges for a public agency pursuant to agreement under Section
54346.2 of the Government Code or Section 5472.5 of the Health and Safety Code.

(3) Subdivision (a) does not apply to an on-bill repayment obligation established pursuant to Chapter 7.6 (commencing with Section 2833) of Part 2.

SECTION 1.

SEC. 5. Chapter 7.6 (commencing with Section 2833) is added to Part 2 of Division 1 of the Public Utilities Code, to read:

Chapter 7.6. Energy Efficiency and Renewable Energy On-Bill Repayment Programs

2833. For purposes of this chapter, the following terms have the following meanings:

(a) “Eligible energy efficiency investment” means an expenditure for energy efficiency retrofits or improvements that would be expected to result in an annual reduction in electricity and gas billings that equals or exceeds the sum of the annual payments for the investment and meet the requirements as established by the commission in consultation with the energy commission.

(b) “Eligible renewable energy or distributed generation investment” means an expenditure for an eligible renewable energy resource or distributed generation system that meet the requirements as established by the commission in consultation with the energy commission. For these purposes, “eligible renewable energy resource” means an eligible renewable energy resource pursuant to the California Renewables Portfolio Standard Program (Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 4), a solar water heating system, or a solar heating collector as defined in Section 2861.

(c) “Fixed” includes, but is not limited to, systems attached to a residential, commercial, industrial, agricultural, or other real property pursuant to a power purchase agreement or lease between the owner of the improvement and the owner of the real property if the power purchase agreement or lease contains all of the following:

(1) The term of the power purchase agreement or lease is at least the same as the term of the on-bill repayment program.
(2) The owner of the attached improvement agrees to install, maintain, and monitor the improvement for the entire term of the power purchase agreement or lease.

(3) The owner of the attached improvement is not permitted to remove the system prior to completion of the term of the on-bill repayment program—provided—the payment obligations of the homeowner are met.

(4) The right to receive electricity from the system, through a power purchase agreement or lease or the right to the system itself; is tied to the ownership of the real property and is required to be automatically transferred with the title to the real property whether the title is transferred by voluntary sale, judicial or nonjudicial foreclosure, or by any other means.

(5) To ensure the property owner is guaranteed the electricity power from the system for the length of the on-bill repayment program, the improvement cannot be removed if the owner of the real property or the utility is performing its obligations under the contract.

(d) "On-bill repayment program" means a system approved by the commission that enables building owners or occupants to pay the costs for financing eligible energy efficiency, renewable energy, or distributed generation investments through their regular utility billings for electric service, with the financing provided by third parties, including banks, credit unions, solar service providers, or other entities as approved by the commission.

2834. (a) The commission shall require an electrical corporation to develop and implement on-bill repayment programs for eligible energy efficiency and renewable energy investments on terms that the commission determines are just and reasonable. An electrical corporation may include marketing, contractor qualification, and project inspection services in conjunction with an on-bill repayment program, to be performed either by itself or third parties designated by the electrical corporation and approved by the commission. The commission, in consultation with the Energy Commission, may establish marketing, contractor qualification, project inspection, or other program requirements for on-bill repayment programs.

(b) The commission shall ensure that any on-bill repayment program approved by the commission includes all the following program elements:
(1) Repayment shall be pursuant to an agreed-upon schedule or formula that is acceptable to the electrical corporation or its agent, as approved by the commission, that provides the billing and transfer services, the customer of the electrical corporation, and the third party that provides financing for the eligible energy efficiency and renewable energy investment. The payment shall be listed as a separate line item on the electrical corporation’s billings. While it is the expectation that the finance charge included in the electrical corporation’s billings will be less than the monetary savings that results from the eligible energy efficiency and renewable energy investment, so that customers can knowingly weigh the benefits of investments against anticipated savings, this is not an absolute requirement and customers shall have the option to pay more than the amount of savings, if offered by the third party, and the customer determines that paying off the investment over a shorter period of time is in the customer’s best interest. The payment schedule may be varied by season to correspond with the anticipated seasonal savings.

(2) The obligation to pay the costs of financing the energy efficiency and renewable energy investments eligible for on-bill repayment shall run with the real property upon which the improvement is fixed and shall be part of the tariff rate for the property. The commission shall require an electrical corporation or its agent, as approved by the commission, to provide notice to the new customer, of the estimated savings, the amount that remains owed, and the amount of the charge included in the monthly or other periodic billing, whenever a request is made to change the holder of the account to a new customer. A realtor or real estate agent shall disclose the amount that remains owed and the amount of the charge included in the monthly or other periodic billing the buyer of a transaction involving the property.

(3) An electrical corporation or its agent, as approved by the commission, may require that it be provided with a copy of loan documents as a condition for providing on-bill repayment services.

(4) Amounts collected by the electrical corporation or its agent, as approved by the commission, on behalf of a third party that provides financing for an eligible energy efficiency and renewable energy investment shall be promptly remitted to the third party. If the amount paid by the customer is less than the amount the customer was billed, the amount paid by the customer shall be
prorated in proportion to the respective charges of the electrical corporation and third-party billing schedule and the portion owed to the third party shall be promptly remitted to the third party. The electrical corporation may treat any shortfall in payment by the customer as a failure to pay for electric service, consistent with the rules established by the commission for a customer’s failure to pay for electric service.

(5) If a dispute arises between the customer and the third party over the customer’s obligation to pay the third party, the electrical corporation may hold the moneys collected on behalf of the third party in an interest bearing account, if instructed to do so by a court having jurisdiction over the dispute, or by an arbitrator appointed to resolve the dispute.

(c) The electrical corporation shall treat any resulting shortfall in payment for electrical or gas service consistent with the rules established by the commission for a customer’s failure to pay for electrical or gas service.

2833. The purpose of this chapter is to establish on-bill repayment programs by electrical corporations and gas corporations, subject to the direction and supervision of the commission, to enable increased access to financing for clean energy improvements, to incentivize private investors to invest in California clean energy improvements, to stimulate the state economy by creating jobs for contractors and other persons who complete new energy improvements, and to reinforce the leadership role of the state in the new energy economy, thereby attracting clean energy manufacturing facilities and related jobs to the state.

2834. For purposes of this chapter, the following terms have the following meanings:

(a) “OBR partner” means the person or entity owed payment for eligible energy efficiency, renewable energy, or distributed generation investments pursuant to an on-bill reimbursement program, and may include, but is not limited to, a bank, savings and loan, credit union, or independent solar energy producer, as defined in Article 3 (commencing with Section 2868) of Chapter 9. Financing may be provided in the form of a loan, lease, power purchase agreement, energy service agreement, or other financing structure as approved by the commission.

(b) “On-bill repayment program” means a program approved by the commission that enables building owners or occupants,
through their regular utility billings for electric or gas service, to
pay for the costs to finance eligible energy efficiency, renewable
energy, or distributed generation investments pursuant to an
agreement with an OBR partner.
(c) “Runs with the meter,” in reference to an on-bill repayment
program, means that the obligation to make on-bill repayment for
energy efficiency, renewable energy, or distributed generation
improvements is a condition precedent for receiving electric or
gas service for the property that receives the benefits of the
improvements.
2835. (a) The commission shall require each electrical
corporation and gas corporation with 100,000 or more service
connections in the state to develop and implement on-bill
repayment programs for eligible energy efficiency, renewable
energy, and distributed generation investments. The commission
may order an electrical corporation or gas corporation with fewer
than 100,000 service connections in the state to establish on-bill
repayment programs based upon each utility’s individual
circumstances. Nothing in this chapter requires that the on-bill
repayment programs established for each electrical corporation
and gas corporation that is subject to the requirements of this
chapter be identical and the commission may vary program
elements for each utility based upon each utility’s individual
circumstances. Nothing in this chapter limits the authority of the
commission to approve and supervise separate on-bill repayment
programs with different features for different categories of
properties, including single-family residential, multifamily
residential, commercial, industrial, public buildings, and other
categories of properties that the commission determines to be
appropriate. The commission shall approve the on-bill repayment
programs developed by each electrical corporation and gas
corporation to ensure that the terms of the program are just and
reasonable and shall supervise the programs to ensure that the
programs are administered in compliance with the terms approved
by the commission.
(b) (1) The commission shall establish requirements to be
included by each electrical corporation or gas corporation in the
utility’s on-bill repayment programs that are submitted to the
commission for approval, including, but not limited to, project
eligibility criteria, the establishment of energy and cost savings
evaluation standards and requirements, prepayment options, and project inspection services or requirements.

(2) (A) The commission shall adopt rules for an electrical corporation, gas corporation, or agent of the utility, to provide adequate notice and disclosure to a new customer that applies to the utility for electric or gas service for a property that is subject to an on-bill repayment program contract.

(B) The commission shall adopt a standard notice and disclosure form for a seller of real property subject to an on-bill repayment contract to supply to a buyer of the property pursuant to Section 2079.10b of the Civil Code.

(3) The commission shall ensure that any on-bill repayment program for residential customers approved by the commission includes both of the following program elements:

(A) Protections and program access for middle- and low-income customers.

(B) Adequate disclosure that allows customers to knowingly weigh the benefits of investment and determine whether the investment is in the customer’s best interest.

(c) (1) Investments for energy efficiency, renewable energy, and distributed generation pursuant to a commission approved on-bill repayment program are eligible for on-bill repayment, with the repayment obligation running with the meter pursuant to paragraph (5).

(2) Each electrical corporation and gas corporation shall require that the utility be provided with a copy of financing documents as a condition for providing on-bill repayment services.

(3) The on-bill repayment amount shall be listed by the electrical corporation or gas corporation as a separate line item on the utility’s billing to the customer.

(4) (A) The commission shall require that on-bill repayment amounts collected by an electrical corporation, gas corporation, or the utility’s agents be promptly remitted to the OBR partner.

(B) The commission may require, if the amount paid by the customer is less than the amount billed to the customer, that the amount paid by the customer be prorated in proportion to the respective charges of the electrical corporation or gas corporation and the OBR partner and require that the portion owed to the OBR partner be promptly remitted to the OBR partner. If the commission requires that payment be prorated, any shortfall in payment by
the customer is a failure to pay for electric or gas service and shall
be treated consistent with the rules established by the commission
for a customer’s failure to pay for service.
(C) For purposes of Sections 777.1 and 779.2, the on-bill
repayment obligation is a payment obligation owed by the customer
to the electrical corporation or gas corporation and payment by
the customer to the electrical corporation or gas corporation
extinguishes that portion of the debt owed by the customer
irrespective of whether the electrical corporation or gas
corporation pays the OBR partner pursuant to the on-bill
repayment program. The obligation of the electrical corporation
or gas corporation to pay the OBR partner pursuant to the on-bill
repayment program does not make the obligation owed by the
consumer a debt owed to a third-party pursuant to paragraph (3)
of subdivision (e) of Section 777.1 or subdivision (a) of Section
779.2.
(D) If a dispute arises between the customer and the OBR
partner over the customer’s obligation to pay the on-bill repayment
amount, the electrical corporation, gas corporation, or the utility’s
agent shall hold the amounts collected on behalf of the OBR
partner in an interest-bearing account, if instructed to do so by a
court having jurisdiction over the dispute, or by an arbitrator
appointed to resolve the dispute.
(5) The obligation to pay pursuant to an on-bill repayment
program contract runs with the meter. Acceptance of electric or
gas service, following submission of an application for that service
and receipt of the notice and disclosure pursuant to rules adopted
by the commission pursuant to paragraph (2) of subdivision (b),
operates as an assignment of the contract and assumption of the
contractual rights and obligations of the on-bill repayment contract
for the duration of service and the going-forward obligation to
pay on-bill reimbursement is an obligation for the receipt of
electric or gas service. Acceptance of electric or gas service does
not operate as an assumption of any past due amounts owed prior
to the beginning of that service by the person or entity that acquires
the property.
SEC. 6. No reimbursement is required by this act pursuant to
Section 6 of Article XIII B of the California Constitution because
the only costs that may be incurred by a local agency or school
district will be incurred because this act creates a new crime or
infraction, eliminates a crime or infraction, or changes the penalty
for a crime or infraction, within the meaning of Section 17556 of
the Government Code, or changes the definition of a crime within
the meaning of Section 6 of Article XIII B of the California
Constitution.