

AMENDED IN SENATE MAY 2, 2012
AMENDED IN SENATE APRIL 17, 2012

SENATE BILL

No. 998

Introduced by Senator De León
(Coauthors: 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, 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, renewable energy, and distributed generation investments, financed pursuant to an agreement with an OBR partner, as defined, on terms that the commission 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 an electrical corporation or gas corporation to treat any resulting shortfall in payment for electric or gas service consistent with the rules established by the commission for a customer’s failure to pay for 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.

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. Section 2079.10b is added to the Civil Code, to~~
 2 ~~read:~~
 3 ~~2079.10b. (a) On or after July 1, 2013, every seller of real~~
 4 ~~property subject to an on-bill repayment obligation, pursuant to~~
 5 ~~Chapter 7.6 (commencing with Section 2833) of Part 2 of Division~~
 6 ~~1 of the Public Utilities Code, shall deliver to the buyer an on-bill~~
 7 ~~repayment notice and disclosure as adopted by the Public Utilities~~
 8 ~~Commission pursuant to subparagraph (B) of paragraph (2) of~~
 9 ~~subdivision (b) of Section 2835 of the Public Utilities Code.~~
 10 ~~(b) Upon delivery of the completed notice and disclosure form~~
 11 ~~to the buyer of real property, the seller or agent is not required to~~
 12 ~~provide additional information relative to the on-bill repayment~~
 13 ~~contract and the information in the notice and disclosure form is~~
 14 ~~adequate to inform the buyer about the existence of the energy~~
 15 ~~efficiency, renewable energy, or distributed generation~~

1 ~~improvement, the on-bill repayment program contract, and the~~
2 ~~repayment obligation that will be assigned to and assumed by the~~
3 ~~buyer upon beginning electric or gas service pursuant to Section~~
4 ~~2835 of the Public Utilities Code.~~

5 ~~SEC. 2.~~

6 *SECTION 1.* Section 25402.9 of the Public Resources Code is
7 amended to read:

8 25402.9. (a) On or before July 1, 1996, the commission shall
9 develop, adopt, and publish an informational booklet to educate
10 and inform homeowners, rental property owners, renters, sellers,
11 brokers, and the general public about the statewide home energy
12 rating program adopted pursuant to Section 25942.

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

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

29 ~~SEC. 3.~~

30 *SEC. 2.* Section 777.1 of the Public Utilities Code is amended
31 to read:

32 777.1. (a) If an electrical, gas, heat, or water corporation
33 furnishes residential service to residential occupants through a
34 master meter in a multiunit residential structure, mobilehome park,
35 or permanent residential structure in a labor camp, as defined in
36 Section 17008 of the Health and Safety Code, and the owner,
37 manager, or operator of the structure or park is listed by the
38 corporation as the customer of record, the corporation shall make
39 every good faith effort to inform the residential occupants, by
40 means of a written notice posted on the door of each residential

1 unit at least 15 days prior to termination, when the account is in
2 arrears, that service will be terminated on a date specified in the
3 notice. If it is not reasonable or practicable to post the notice on
4 the door of each residential unit, the corporation shall post two
5 copies of the notice in each accessible common area and at each
6 point of access to the structure or structures. The notice shall further
7 inform the residential occupants that they have the right to become
8 customers, to whom the service will then be billed, without being
9 required to pay any amount which may be due on the delinquent
10 account. The notice also shall specify, in plain language, what the
11 residential occupants are required to do in order to prevent the
12 termination of, or to reestablish service; the estimated monthly
13 cost of service; the title, address, and telephone number of a
14 representative of the corporation who can assist the residential
15 occupants in continuing service; and the address and telephone
16 number of a qualified legal services project, as defined in Section
17 6213 of the Business and Professions Code, which has been
18 recommended by the local county bar association. The notice shall
19 be in English and the languages listed in Section 1632 of the Civil
20 Code.

21 (b) The corporation is not required to make service available to
22 the residential occupants unless each residential occupant or a
23 representative of the residential occupants agrees to the terms and
24 conditions of service and meets the requirements of law and the
25 corporation's rules and tariffs. However, if one or more of the
26 residential occupants or the representative of the residential
27 occupants are willing and able to assume responsibility for
28 subsequent charges to the account to the satisfaction of the
29 corporation, or if there is a physical means, legally available to
30 the corporation, of selectively terminating service to those
31 residential occupants who have not met the requirements of the
32 corporation's rules and tariffs or for whom the representative of
33 the residential occupants is not responsible, the corporation shall
34 make service available to those residential occupants who have
35 met those requirements or on whose behalf those requirements
36 have been met.

37 (c) If prior service for a period of time or other demonstration
38 of credit worthiness is a condition for establishing credit with the
39 corporation, residence and proof of prompt payment of rent or

1 other credit obligation during that period of time acceptable to the
2 corporation is a satisfactory equivalent.

3 (d) Any residential occupant who becomes a customer of the
4 corporation pursuant to this section whose periodic payments, such
5 as rental payments, include charges for residential electrical, gas,
6 heat, or water service, where those charges are not separately
7 stated, may deduct from the periodic payment each payment period
8 all reasonable charges paid to the corporation for those services
9 during the preceding payment period.

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

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

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

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

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

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

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

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

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

1 (3) Reasonable attorney's fees of the residential occupants, the
2 representative of the residential occupants, or each of them,
3 incurred in the enforcement of this section, including, but not
4 limited to, enforcement of a lien.

5 (g) Notwithstanding any other provision of law, and in addition
6 to any other remedy provided by law, if the owner, manager, or
7 operator, by any act or omission, directs, permits, or fails to prevent
8 a termination of service while any residential unit receiving that
9 service is occupied, the corporation may commence an action for
10 the recovery of all of the following:

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

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

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

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

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

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

36 (i) The commission shall adopt rules and orders necessary to
37 implement this section and shall liberally construe this section to
38 accomplish its purpose of ensuring that service to residential
39 occupants is not terminated due to nonpayment by the customer
40 unless the corporation has made every reasonable effort to continue

1 service to the residential occupants. The rules and orders shall
2 include, but are not limited to, reasonable penalties for a violation
3 of this section, guidelines for assistance to residents in the
4 enforcement of this section, and requirements for the notice
5 prescribed by subdivision (a), including, but not limited to, clear
6 wording, large and boldface type, and comprehensive instructions
7 to ensure full notice to the resident.

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

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

17 (l) For purposes of this section, "representative of the residential
18 occupants" does not include a tenants' association.

19 ~~SEC. 4.~~

20 *SEC. 3.* Section 779.2 of the Public Utilities Code is amended
21 to read:

22 779.2. (a) No electrical, gas, heat, telephone, or water
23 corporation may terminate residential service for nonpayment of
24 any delinquent account or other indebtedness owed by the customer
25 or subscriber to any other person or corporation or when the
26 obligation represented by the delinquent account or other
27 indebtedness was incurred with a person or corporation other than
28 the electrical, gas, heat, telephone, or water corporation demanding
29 payment therefor.

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

38 (2) Subdivision (a) does not apply to any privately owned or
39 publicly owned public utility which collects sanitation or sewerage
40 charges for a public agency pursuant to agreement under Section

1 54346.2 of the Government Code or Section 5472.5 of the Health
2 and Safety Code.

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

6 ~~SEC. 5.~~

7 *SEC. 4.* Chapter 7.6 (commencing with Section 2833) is added
8 to Part 2 of Division 1 of the Public Utilities Code, to read:

9

10 CHAPTER 7.6. ENERGY EFFICIENCY AND RENEWABLE ENERGY
11 ON-BILL REPAYMENT PROGRAMS
12

13 2833. The purpose of this chapter is to establish on-bill
14 repayment programs by electrical corporations and gas
15 corporations, subject to the direction and supervision of the
16 commission, to enable increased access to financing for clean
17 energy improvements, to incentivize private investors to invest in
18 California clean energy improvements, to stimulate the state
19 economy by creating jobs for contractors and other persons who
20 complete new energy improvements, and to reinforce the leadership
21 role of the state in the new energy economy, thereby attracting
22 clean energy manufacturing facilities and related jobs to the state.

23 2834. For purposes of this chapter, the following terms have
24 the following meanings:

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

34 (b) “On-bill repayment program” means a program approved
35 by the commission that enables building owners or occupants,
36 through their regular utility billings for electric or gas service, to
37 pay for the costs to finance eligible energy efficiency, renewable
38 energy, or distributed generation investments pursuant to an
39 agreement with an OBR partner.

1 (c) “Runs with the meter,” in reference to an on-bill repayment
2 program, means that the obligation to make on-bill repayment for
3 energy efficiency, renewable energy, or distributed generation
4 improvements is a condition precedent for receiving electric or
5 gas service for the property that receives the benefits of the
6 improvements.

7 2835. (a) The commission shall require each electrical
8 corporation and gas corporation with 100,000 or more service
9 connections in the state to develop and implement on-bill
10 repayment programs for eligible energy efficiency, renewable
11 energy, and distributed generation investments. The commission
12 may order an electrical corporation or gas corporation with fewer
13 than 100,000 service connections in the state to establish on-bill
14 repayment programs based upon each utility’s individual
15 circumstances. Nothing in this chapter requires that the on-bill
16 repayment programs established for each electrical corporation
17 and gas corporation that is subject to the requirements of this
18 chapter be identical and the commission may vary program
19 elements for each utility based upon each utility’s individual
20 circumstances. Nothing in this chapter limits the authority of the
21 commission to approve and supervise separate on-bill repayment
22 programs with different features for different categories of
23 properties, including single-family residential, multifamily
24 residential, commercial, industrial, public buildings, and other
25 categories of properties that the commission determines to be
26 appropriate. The commission shall approve the on-bill repayment
27 programs developed by each electrical corporation and gas
28 corporation to ensure that the terms of the program are just and
29 reasonable and shall supervise the programs to ensure that the
30 programs are administered in compliance with the terms approved
31 by the commission.

32 (b) (1) The commission shall establish requirements to be
33 included by each electrical corporation or gas corporation in the
34 utility’s on-bill repayment programs that are submitted to the
35 commission for approval, including, but not limited to, project
36 eligibility criteria, the establishment of energy and cost savings
37 evaluation standards and requirements, prepayment options, and
38 project inspection services or requirements.

39 (2) ~~(A)~~—The commission shall adopt rules for an electrical
40 corporation, gas corporation, or agent of the utility, to provide

1 adequate notice and disclosure to a new customer that applies to
2 the utility for electric or gas service for a property that is subject
3 to an on-bill repayment program contract.

4 ~~(B) The commission shall adopt a standard notice and disclosure~~
5 ~~form for a seller of real property subject to an on-bill repayment~~
6 ~~contract to supply to a buyer of the property pursuant to Section~~
7 ~~2079.10b of the Civil Code.~~

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

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

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

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

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

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

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

30 (B) The commission may require, if the amount paid by the
31 customer is less than the amount billed to the customer, that the
32 amount paid by the customer be prorated in proportion to the
33 respective charges of the electrical corporation or gas corporation
34 and the OBR partner and require that the portion owed to the OBR
35 partner be promptly remitted to the OBR partner. If the commission
36 requires that payment be prorated, any shortfall in payment by the
37 customer is a failure to pay for electric or gas service and shall be
38 treated consistent with the rules established by the commission for
39 a customer's failure to pay for service.

1 (C) For purposes of Sections 777.1 and 779.2, the on-bill
2 repayment obligation is a payment obligation owed by the customer
3 to the electrical corporation or gas corporation and payment by
4 the customer to the electrical corporation or gas corporation
5 extinguishes that portion of the debt owed by the customer
6 irrespective of whether the electrical corporation or gas corporation
7 pays the OBR partner pursuant to the on-bill repayment program.
8 The obligation of the electrical corporation or gas corporation to
9 pay the OBR partner pursuant to the on-bill repayment program
10 does not make the obligation owed by the consumer a debt owed
11 to a third party pursuant to paragraph (3) of subdivision (e) of
12 Section 777.1 or subdivision (a) of Section 779.2.

13 (D) If a dispute arises between the customer and the OBR
14 partner over the customer's obligation to pay the on-bill repayment
15 amount, the electrical corporation, gas corporation, or the utility's
16 agent shall hold the amounts collected on behalf of the OBR partner
17 in an interest-bearing account, if instructed to do so by a court
18 having jurisdiction over the dispute, or by an arbitrator appointed
19 to resolve the dispute.

20 (5) The obligation to pay pursuant to an on-bill repayment
21 program contract runs with the meter. Acceptance of electric or
22 gas service, following submission of an application for that service
23 and receipt of the notice and disclosure pursuant to rules adopted
24 by the commission pursuant to paragraph (2) of subdivision (b),
25 operates as an assignment of the contract and assumption of the
26 contractual rights and obligations of the on-bill repayment contract
27 for the duration of service and the going forward obligation to pay
28 on-bill reimbursement is an obligation for the receipt of electric
29 or gas service. Acceptance of electric or gas service does not
30 operate as an assumption of any past due amounts owed prior to
31 the beginning of that service by the person or entity that acquires
32 the property.

33 ~~SEC. 6.~~

34 *SEC. 5.* No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 the only costs that may be incurred by a local agency or school
37 district will be incurred because this act creates a new crime or
38 infraction, eliminates a crime or infraction, or changes the penalty
39 for a crime or infraction, within the meaning of Section 17556 of
40 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

O