

AMENDED IN ASSEMBLY SEPTEMBER 9, 2013
AMENDED IN ASSEMBLY SEPTEMBER 6, 2013
AMENDED IN ASSEMBLY SEPTEMBER 3, 2013
AMENDED IN ASSEMBLY AUGUST 6, 2013
AMENDED IN ASSEMBLY JUNE 14, 2013
AMENDED IN SENATE MAY 28, 2013
AMENDED IN SENATE MAY 8, 2013
AMENDED IN SENATE APRIL 15, 2013

SENATE BILL

No. 611

Introduced by Senator Hill
(Principal coauthor: Senator Wolk)

February 22, 2013

An act to amend Sections ~~309.5, 1731, 1756, and 5900~~ of the ~~Public Utilities Code, relating to the Public Utilities Commission 15820.903 and 15820.913~~ of, and to add Section 15820.927 to, the Government Code, and to add Section 1978 to the Welfare and Institutions Code, relating to correctional facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 611, as amended, Hill. ~~Public Utilities Commission: Division of Ratepayer Advocates: judicial review of commission decisions. Correctional facilities: bond financing.~~

(1) Existing law authorizes the Department of Corrections and Rehabilitation, participating counties, and the State Public Works Board to acquire, design, and construct local jail facilities approved by the

Board of State and Community Corrections (BSCC). Existing law authorizes the State Public Works Board to issue revenue bonds, notes, or bond anticipation notes in the amounts of \$445,771,000 and \$774,229,000, in 2 phases, to finance the acquisition, design, and construction, and a reasonable construction reserve, of approved local jail facilities, as specified. The funds derived from those revenue bonds, notes, or bond anticipation notes are continuously appropriated for the purposes described above.

This bill would decrease the authorization for revenue bonds, notes, or bond anticipation notes in the first phase from \$445,771,000 to \$365,771,000 and increase the authorization of the 2nd phase from \$774,229,000 to \$854,229,000.

(2) Existing law authorizes the Board of State and Community Corrections, the State Public Works Board, and a participating county to acquire, design, and construct an adult local criminal justice facility approved by the Board of State and Community Corrections, or to acquire a site or sites owned by, or subject to a lease option to purchase held by, a participating county. Existing law authorizes the State Public Works Board to issue up to \$500,000,000 in revenue bonds, notes, or bond anticipation notes to finance the acquisition, design, and construction of approved adult local criminal justice facilities, and continuously appropriates the funds for those purposes.

This bill would authorize the Board of State and Community Corrections to select the County of San Mateo for the grant of a conditional award, on the same basis as other counties under this program, even if the county has started working drawings, started construction phase activities, put the project out to bid, adopted performance criteria, created concept drawings, completed the design-build package, or put the project out for design-build solicitation. The bill would authorize the necessary approvals by the State Public Works Board and the Department of Finance to be given to the County of San Mateo project, if selected, even after specified phases of the project are complete.

This bill would make legislative findings and declarations as to the necessity of a special statute for the County of San Mateo.

(3) Existing law authorizes the Department of Corrections and Rehabilitation, a participating county, and the board to acquire, design, renovate, or construct a local youthful offender rehabilitative facility, approved by the BSCC, or a site or sites owned by, or subject to a lease or option to purchase held by, a participating county. Existing law

authorizes the issuance of up to \$300,000,000 in revenue bonds, notes, or bond anticipation notes to finance the acquisition, design, renovation, or construction, and a reasonable construction reserve, of approved local youthful offender rehabilitative facilities.

This bill would, in the event that a county that has been conditionally awarded financing later determines that participating with other counties in a shared regional facility would provide an improved solution to the county's needs and the needs of other counties, authorize the county to apply to the BSCC for redirection of the conditional award to another county that will be the lead county for the regional facility, in conjunction with the original county and, potentially, other counties. The bill would authorize the board to redirect the conditional award, prior to any approval and establishment of the project, if certain determinations are made by the BSCC.

~~The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities, as defined. Existing law establishes the Division of Ratepayer Advocates within the commission to represent the interests of public utility customers and subscribers, with the goal of obtaining the lowest possible rate for service consistent with reliable and safe service levels. Existing law requires the division to annually submit specified information to the Legislature, as prescribed. Existing law requires the Director of the Division of Ratepayer Advocates to submit an annual budget to the commission for final approval. Existing law authorizes the director of the division to appoint a lead attorney to represent the division and requires all attorneys assigned by the Public Utilities Commission to perform services for the division to report to and be directed by the lead attorney for the division.~~

~~This bill would rename the Division of Ratepayer Advocates the Office of Ratepayer Advocates, would authorize the office to seek rehearings and judicial review of commission decisions, and would require the office to include information about petitions for writs of review filed by the office under this authority in the annual report to the Legislature. The bill would require that the director of the office develop a budget for the office that would be submitted to the Department of Finance for final approval. The bill would require the lead attorney to obtain adequate legal personnel for the work to be conducted by the office from the Public Utilities Commission's attorney and requires the Public Utilities Commission's attorney to timely and appropriately fulfill all requests for legal personnel made by the lead~~

attorney for the office, provided the office has sufficient moneys and positions in its budget for the services requested. The bill would make other conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

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

1 SECTION 1. Section 15820.903 of the Government Code is
 2 amended to read:

3 15820.903. (a) The SPWB may issue up to ~~four hundred~~
 4 ~~forty-five~~ *three hundred sixty-five* million seven hundred
 5 seventy-one thousand dollars ~~(\$445,771,000)~~ *(\$365,771,000)* in
 6 revenue bonds, notes, or bond anticipation notes, pursuant to
 7 Chapter 5 of Part 10b of Division 3 of Title 2 (commencing with
 8 Section 15830) to finance the acquisition, design, or construction,
 9 and a reasonable construction reserve, of approved local jail
 10 facilities described in Section 15820.901, and any additional
 11 amount authorized under Section 15849.6 to pay for the cost of
 12 financing.

13 (b) Proceeds from the revenue bonds, notes, or bond anticipation
 14 notes may be utilized to reimburse a participating county for the
 15 costs of acquisition, preliminary plans, working drawings, and
 16 construction for approved projects.

17 (c) Notwithstanding Section 13340, funds derived pursuant to
 18 this section and Section 15820.902 are continuously appropriated
 19 for purposes of this chapter.

20 (d) This section shall become inoperative on June 30, 2017, and
 21 no project may be commenced after that date; however, projects
 22 that have already commenced by that date may be completed and
 23 financed with bonds issued pursuant to this chapter.

24 SEC. 2. Section 15820.913 of the Government Code is amended
 25 to read:

26 15820.913. (a) The SPWB may issue up to ~~seven hundred~~
 27 ~~seventy-four~~ *eight hundred fifty-four* million two hundred
 28 twenty-nine thousand dollars ~~(\$774,229,000)~~ *(\$854,229,000)* in
 29 revenue bonds, notes, or bond anticipation notes, pursuant to
 30 Chapter 5 of Part 10b of Division 3 of Title 2 (commencing with
 31 Section 15830) to finance the acquisition, design, or construction,
 32 and a reasonable construction reserve, of approved local jail

1 facilities described in Section 15820.911, and any additional
2 amount authorized under Section 15849.6 to pay for the cost of
3 financing.

4 (b) Proceeds from the revenue bonds, notes, or bond anticipation
5 notes may be used to reimburse a participating county for the costs
6 of acquisition, preliminary plans, working drawings, and
7 construction for approved projects.

8 (c) Notwithstanding Section 13340, funds derived pursuant to
9 this section and Section 15820.912 are continuously appropriated
10 for purposes of this chapter.

11 *SEC. 3. Section 15820.927 is added to the Government Code,*
12 *to read:*

13 *15820.927. (a) Notwithstanding any other law, regulation, or*
14 *a request-for-proposal issued pursuant to this chapter, the Board*
15 *of State and Community Corrections may select the County of San*
16 *Mateo for the grant of a conditional award, on the same basis as*
17 *any other county selected for a conditional award under this*
18 *chapter, even if the county has started working drawings, started*
19 *construction phase activities, put the project out to bid, adopted*
20 *performance criteria, created concept drawings, completed the*
21 *design-build package, or put the project out for design-build*
22 *solicitation. The commencement of any of these activities shall not*
23 *disqualify the County of San Mateo from eligibility for selection*
24 *for a conditional award pursuant to this chapter.*

25 *(b) (1) Notwithstanding Section 13332.11 or any other law,*
26 *regulation, or request for proposal issued pursuant to this chapter,*
27 *the approvals by the State Public Works Board and the Department*
28 *of Finance required for the funding of a project in the County of*
29 *San Mateo, if that project is selected for a conditional award*
30 *pursuant to this section, including, but not limited to, approval of*
31 *the plans and working drawings, may be given after the start of*
32 *working drawings, after the start of construction phase activities,*
33 *or after the project is put out for bid.*

34 *(2) Notwithstanding Section 13332.19 or any other law,*
35 *regulation, or request for proposal issued pursuant to this chapter,*
36 *the approvals by the State Public Works Board and the Department*
37 *of Finance required for the funding of a project in the County of*
38 *San Mateo, if that project is selected for a conditional award*
39 *pursuant to this section, including, but not limited to, approval of*
40 *performance criteria, concept drawings, and the design-build bid*

1 package, may be given after the start of construction phase
 2 activities or after the project has been put out for design-build
 3 solicitation.

4 (c) Other than as set forth in subdivision (d), a project that is
 5 approved under this section shall remain subject to the oversight
 6 of the State Public Works Board and Department of Finance to
 7 the same extent as any other project that receives funding under
 8 this chapter. A project that is approved under this section may be
 9 allocated funds for expenditures made after the State Public Works
 10 Board and the Department of Finance approve the project.

11 SEC. 4. Section 1978 is added to the Welfare and Institutions
 12 Code, immediately following Section 1977, to read:

13 1978. In the event that a county that has been conditionally
 14 awarded financing, pursuant to this article, later determines that
 15 participating with other counties in a shared regional facility
 16 would provide an improved solution to the county's needs and the
 17 needs of other counties, the original county may apply to the Board
 18 of State and Community Corrections (BSCC) for redirection of
 19 the conditional award to another county that will be the lead county
 20 for the regional facility, in conjunction with the original county
 21 and, potentially, other counties. If the BSCC determines, based on
 22 findings submitted by the regional consortium of counties, that the
 23 redirection will result in cost savings, regional efficiencies,
 24 increased services, and improved outcomes, and that the design
 25 of the joint facility will enhance program delivery, health and
 26 mental health services, and the safety and security of minors, the
 27 BSCC may authorize the redirection of the conditional award.
 28 Redirection may only be considered prior to any approval or
 29 establishment of the project by the board.

30 SEC. 5. The Legislature finds and declares that a special law
 31 is necessary and that a general law cannot be made applicable
 32 within the meaning of Section 16 of Article IV of the California
 33 Constitution because of the unique position of the County of San
 34 Mateo to begin construction on a jail facility to help reduce the
 35 critical level of prison overcrowding.

36 ~~SECTION 1. Section 309.5 of the Public Utilities Code is~~
 37 ~~amended to read:~~

38 ~~309.5.—(a) There is within the commission an independent~~
 39 ~~Office of Ratepayer Advocates to represent and advocate on behalf~~
 40 ~~of the interests of public utility customers and subscribers within~~

1 the jurisdiction of the commission. The goal of the office shall be
2 to obtain the lowest possible rate for service consistent with reliable
3 and safe service levels. For revenue allocation and rate design
4 matters, the office shall primarily consider the interests of
5 residential and small commercial customers. The office may seek
6 rehearing and judicial review of commission decisions pursuant
7 to Article 2 (commencing with Section 1731) and Article 3
8 (commencing with Section 1756) of Chapter 9.

9 (b) The director of the office shall be appointed by, and serve
10 at the pleasure of, the Governor, subject to confirmation by the
11 Senate.

12 The director shall annually appear before the appropriate policy
13 committees of the Assembly and the Senate to report on the
14 activities of the office.

15 (c) The director shall develop a budget for the office that shall
16 be subject to final approval of the Department of Finance. As
17 authorized in the approved budget, the office shall employ
18 personnel and resources, including attorneys and other legal support
19 staff, at a level sufficient to ensure that customer and subscriber
20 interests are effectively represented in all significant proceedings.
21 The office may employ experts necessary to carry out its functions.
22 The director may appoint a lead attorney who shall represent the
23 office, and shall report to and serve at the pleasure of the director.
24 The lead attorney for the office shall obtain adequate legal
25 personnel for the work to be conducted by the office from the
26 commission's attorney appointed pursuant to Section 307. The
27 commission's attorney shall timely and appropriately fulfill all
28 requests for legal personnel made by the lead attorney for the
29 office, provided the office has sufficient moneys and positions in
30 its budget for the services requested.

31 (d) The commission shall develop appropriate procedures to
32 ensure that the existence of the office does not create a conflict of
33 roles for any employee. The procedures shall include, but shall
34 not be limited to, the development of a code of conduct and
35 procedures for ensuring that advocates and their representatives
36 on a particular case or proceeding are not advising decisionmakers
37 on the same case or proceeding.

38 (e) The office may compel the production or disclosure of any
39 information it deems necessary to perform its duties from any
40 entity regulated by the commission, provided that any objections

1 to any request for information shall be decided in writing by the
2 assigned commissioner or by the president of the commission, if
3 there is no assigned commissioner.

4 ~~(f) There is hereby created the Public Utilities Commission~~
5 ~~Ratepayer Advocate Account in the General Fund. Moneys from~~
6 ~~the Public Utilities Commission Utilities Reimbursement Account~~
7 ~~in the General Fund shall be transferred in the annual Budget Act~~
8 ~~to the Public Utilities Commission Ratepayer Advocate Account.~~
9 ~~The funds in the Public Utilities Commission Ratepayer Advocate~~
10 ~~Account shall be a budgetary program fund administered and~~
11 ~~utilized exclusively by the office in the performance of its duties~~
12 ~~as determined by the director. The director shall annually submit~~
13 ~~a staffing report containing a comparison of the staffing levels for~~
14 ~~each five-year period.~~

15 ~~(g) On or before January 10 of each year, the office shall provide~~
16 ~~to the chairperson of the fiscal committee of each house of the~~
17 ~~Legislature and to the Joint Legislative Budget Committee all of~~
18 ~~the following information:~~

19 ~~(1) The number of personnel years utilized during the prior year~~
20 ~~by the Office of Ratepayer Advocates.~~

21 ~~(2) The total dollars expended by the Office of Ratepayer~~
22 ~~Advocates in the prior year, the estimated total dollars expended~~
23 ~~in the current year, and the total dollars proposed for appropriation~~
24 ~~in the following budget year.~~

25 ~~(3) Workload standards and measures for the Office of~~
26 ~~Ratepayer Advocates.~~

27 ~~(h) The office shall meet and confer in an informal setting with~~
28 ~~a regulated entity prior to issuing a report or pleading to the~~
29 ~~commission regarding alleged misconduct, or a violation of a law~~
30 ~~or a commission rule or order, raised by the office in a complaint.~~
31 ~~The meet and confer process shall be utilized in good faith to reach~~
32 ~~agreement on issues raised by the office regarding any regulated~~
33 ~~entity in the complaint proceeding.~~

34 ~~SEC. 2. Section 1731 of the Public Utilities Code is amended~~
35 ~~to read:~~

36 ~~1731. (a) The commission shall set an effective date when~~
37 ~~issuing an order or decision. The commission may set the effective~~
38 ~~date of an order or decision prior to the date of issuance of the~~
39 ~~order or decision.~~

1 ~~(b) (1) After any order or decision has been made by the~~
2 ~~commission, any party to the action or proceeding, including the~~
3 ~~Office of Ratepayer Advocates, or any stockholder or bondholder~~
4 ~~or other party pecuniarily interested in the public utility affected,~~
5 ~~may apply for a rehearing in respect to any matters determined in~~
6 ~~the action or proceeding and specified in the application for~~
7 ~~rehearing. The commission may grant and hold a rehearing on~~
8 ~~those matters, if in its judgment sufficient reason is made to appear.~~
9 ~~No cause of action arising out of any order or decision of the~~
10 ~~commission shall accrue in any court to any corporation or person~~
11 ~~unless the corporation or person has filed an application to the~~
12 ~~commission for a rehearing within 30 days after the date of~~
13 ~~issuance or within 10 days after the date of issuance in the case of~~
14 ~~an order issued pursuant to either Article 5 (commencing with~~
15 ~~Section 816) or Article 6 (commencing with Section 851) of~~
16 ~~Chapter 4 relating to security transactions and the transfer or~~
17 ~~encumbrance of utility property.~~

18 ~~(2) The commission shall notify the parties of the issuance of~~
19 ~~an order or decision by either mail or electronic transmission.~~
20 ~~Notification of the parties may be accomplished by one of the~~
21 ~~following methods:~~

22 ~~(A) Mailing the order or decision to the parties to the action or~~
23 ~~proceeding.~~

24 ~~(B) If a party to an action or proceeding consents in advance to~~
25 ~~receive notice of any order or decision related to the action or~~
26 ~~proceeding by electronic mail address, notification of the party~~
27 ~~may be accomplished by transmitting an electronic copy of the~~
28 ~~official version of the order or decision to the party if the party~~
29 ~~has provided an electronic mail address to the commission.~~

30 ~~(C) If a party to an action or proceeding consents in advance to~~
31 ~~receive notice of any order or decision related to the action or~~
32 ~~proceeding by electronic mail address, notification of the party~~
33 ~~may be accomplished by transmitting a link to an Internet Web~~
34 ~~site where the official version of the order or decision is readily~~
35 ~~available to the party if the party has provided an electronic mail~~
36 ~~address to the commission.~~

37 ~~(3) For the purposes of this article, “date of issuance” means~~
38 ~~the mailing or electronic transmission date that is stamped on the~~
39 ~~official version of the order or decision.~~

1 ~~(e) No cause of action arising out of any order or decision of~~
2 ~~the commission construing, applying, or implementing the~~
3 ~~provisions of Chapter 4 of the Statutes of the 2001-02 First~~
4 ~~Extraordinary Session that (1) relates to the determination or~~
5 ~~implementation of the department's revenue requirements, or the~~
6 ~~establishment or implementation of bond or power charges~~
7 ~~necessary to recover those revenue requirements, or (2) in the sole~~
8 ~~determination of the Department of Water Resources, the expedited~~
9 ~~review of order or decision of the commission is necessary or~~
10 ~~desirable, for the maintenance of any credit ratings on any bonds~~
11 ~~or notes of the department issued pursuant to Division 27~~
12 ~~(commencing with Section 80000) of the Water Code or for the~~
13 ~~department to meet its obligations with respect to any bonds or~~
14 ~~notes pursuant to that division, shall accrue in any court to any~~
15 ~~corporation or person unless the corporation or person has filed~~
16 ~~an application with the commission for a rehearing within 10 days~~
17 ~~after the date of issuance of the order or decision. The Department~~
18 ~~of Water Resources shall notify the commission of any~~
19 ~~determination pursuant to paragraph (2) of this subdivision prior~~
20 ~~to the issuance by the commission of any order or decision~~
21 ~~construing, applying, or implementing the provisions of Chapter~~
22 ~~4 of the Statutes of the 2001-02 First Extraordinary Session. The~~
23 ~~commission shall issue its decision and order on rehearing within~~
24 ~~20 days after the filing of the application.~~

25 ~~SEC. 3. Section 1756 of the Public Utilities Code is amended~~
26 ~~to read:~~

27 ~~1756. (a) Within 30 days after the commission issues its~~
28 ~~decision denying the application for a rehearing, or, if the~~
29 ~~application was granted, then within 30 days after the commission~~
30 ~~issues its decision on rehearing, or at least 120 days after the~~
31 ~~application is granted if no decision on rehearing has been issued,~~
32 ~~any aggrieved party, including the Office of Ratepayer Advocates,~~
33 ~~may petition for a writ of review in the court of appeal or the~~
34 ~~Supreme Court for the purpose of having the lawfulness of the~~
35 ~~original order or decision or of the order or decision on rehearing~~
36 ~~inquired into and determined. If the writ issues, it shall be made~~
37 ~~returnable at a time and place specified by court order and shall~~
38 ~~direct the commission to certify its record in the case to the court~~
39 ~~within the time specified.~~

1 ~~(b) The petition for review shall be served upon the executive~~
2 ~~director and the general counsel of the commission either~~
3 ~~personally or by service at the office of the commission.~~

4 ~~(c) With regard to petitions for a writ of review filed pursuant~~
5 ~~to subdivision (a) by the Office of Ratepayer Advocates, the office~~
6 ~~shall include in its annual written report to the chairperson of the~~
7 ~~fiscal committee of each house of the Legislature and to the Joint~~
8 ~~Legislative Budget Committee, required by subdivision (g) of~~
9 ~~Section 309.5, all of the following information:~~

10 ~~(1) The number of petitions for writs of review the office filed.~~

11 ~~(2) The office's rationale for seeking each writ of review.~~

12 ~~(3) The amount of ratepayer dollars the office expended on~~
13 ~~petitions.~~

14 ~~(d) For purposes of this section, the issuance of a decision or~~
15 ~~the granting of an application shall be construed to have occurred~~
16 ~~on the date of issuance, as defined in paragraph (3) of subdivision~~
17 ~~(b) of Section 1731.~~

18 ~~(e) The venue of a petition filed in the court of appeal pursuant~~
19 ~~to this section shall be in the judicial district in which the petitioner~~
20 ~~resides. If the petitioner is a business, venue shall be in the judicial~~
21 ~~district in which the petitioner has its principal place of business~~
22 ~~in California.~~

23 ~~(f) Any party may seek from the Supreme Court, pursuant to~~
24 ~~California Rules of Court, an order transferring related actions to~~
25 ~~a single appellate district.~~

26 ~~(g) For purposes of this section, review of decisions pertaining~~
27 ~~solely to water corporations shall only be by petition for writ of~~
28 ~~review in the Supreme Court, except that review of complaint or~~
29 ~~enforcement proceedings may be in the court of appeal or the~~
30 ~~Supreme Court.~~

31 ~~(h) No order or decision arising out of a commission proceeding~~
32 ~~under Section 854 shall be reviewable in the court of appeal~~
33 ~~pursuant to subdivision (a) if the application for commission~~
34 ~~authority to complete the merger or acquisition was filed on or~~
35 ~~before December 31, 1998, by two telecommunications-related~~
36 ~~corporations including at least one which provides local~~
37 ~~telecommunications service to over one million California~~
38 ~~customers. These orders or decisions shall be reviewed pursuant~~
39 ~~to the Public Utilities Code in existence on December 31, 1998.~~

1 SEC. 4.— Section 5900 of the Public Utilities Code is amended to
2 read:

3 5900. (a) ~~The holder of a state franchise shall comply with the~~
4 ~~provisions of Sections 53055, 53055.1, 53055.2, and 53088.2 of~~
5 ~~the Government Code, and any other customer service standards~~
6 ~~pertaining to the provision of video service established by federal~~
7 ~~law or regulation or adopted by subsequent enactment of the~~
8 ~~Legislature. All customer service and consumer protection~~
9 ~~standards under this section shall be interpreted and applied to~~
10 ~~accommodate newer or different technologies while meeting or~~
11 ~~exceeding the goals of the standards.~~

12 (b) ~~The holder of a state franchise shall comply with provisions~~
13 ~~of Section 637.5 of the Penal Code and the privacy standards~~
14 ~~contained in Section 551 et seq. of Title 47 of the United States~~
15 ~~Code.~~

16 (c) ~~The local entity shall enforce all of the customer service and~~
17 ~~protection standards of this section with respect to complaints~~
18 ~~received from residents within the local entity's jurisdiction, but~~
19 ~~it may not adopt or seek to enforce any additional or different~~
20 ~~customer service or other performance standards under Section~~
21 ~~53055.3 or subdivision (q), (r), or (s) of Section 53088.2 of the~~
22 ~~Government Code, or any other authority or provision of law.~~

23 (d) ~~The local entity shall, by ordinance or resolution, provide a~~
24 ~~schedule of penalties for any material breach by a holder of a state~~
25 ~~franchise of this section. No monetary penalties shall be assessed~~
26 ~~for a material breach if it is out of the reasonable control of the~~
27 ~~holder. Further, no monetary penalties may be imposed prior to~~
28 ~~January 1, 2007. Any schedule of monetary penalties adopted~~
29 ~~pursuant to this section shall in no event exceed five hundred~~
30 ~~dollars (\$500) for each day of each material breach, not to exceed~~
31 ~~one thousand five hundred dollars (\$1,500) for each occurrence~~
32 ~~of a material breach. However, if a material breach of this section~~
33 ~~has occurred, and the local entity has provided notice and a fine~~
34 ~~or penalty has been assessed, and if a subsequent material breach~~
35 ~~of the same nature occurs within 12 months, the penalties may be~~
36 ~~increased by the local entity to a maximum of one thousand dollars~~
37 ~~(\$1,000) for each day of each material breach, not to exceed three~~
38 ~~thousand dollars (\$3,000) for each occurrence of the material~~
39 ~~breach. If a third or further material breach of the same nature~~
40 ~~occurs within those same 12 months, and the local entity has~~

1 provided notice and a fine or penalty has been assessed, the
2 penalties may be increased to a maximum of two thousand five
3 hundred dollars (\$2,500) for each day of each material breach, not
4 to exceed seven thousand five hundred dollars (\$7,500) for each
5 occurrence of the material breach. With respect to video providers
6 subject to a franchise or license, any monetary penalties assessed
7 under this section shall be reduced dollar-for-dollar to the extent
8 any liquidated damage or penalty provision of a current cable
9 television ordinance, franchise contract, or license agreement
10 imposes a monetary obligation upon a video provider for the same
11 customer service failures, and no other monetary damages may be
12 assessed.

13 (e) The local entity shall give the video service provider written
14 notice of any alleged material breach of the customer service
15 standards of this division and allow the video provider at least 30
16 days from receipt of the notice to remedy the specified material
17 breach.

18 (f) A material breach for the purposes of assessing penalties
19 shall be deemed to have occurred for each day within the
20 jurisdiction of each local entity, following the expiration of the
21 period specified in subdivision (e), that any material breach has
22 not been remedied by the video service provider, irrespective of
23 the number of customers or subscribers affected.

24 (g) Any penalty assessed pursuant to this section shall be
25 remitted to the local entity, which shall submit one-half of the
26 penalty to the Digital Divide Account established in Section 280.5.

27 (h) Any interested person may seek judicial review of a decision
28 of the local entity in a court of appropriate jurisdiction. For this
29 purpose, a court of law shall conduct a de novo review of any
30 issues presented.

31 (i) This section shall not preclude a party affected by this section
32 from utilizing any judicial remedy available to that party without
33 regard to this section. Actions taken by a local legislative body,
34 including a local franchising entity, pursuant to this section shall
35 not be binding upon a court of law. For this purpose, a court of
36 law shall conduct de novo review of any issues presented.

37 (j) For purposes of this section, “material breach” means any
38 substantial and repeated failure of a video service provider to
39 comply with service quality and other standards specified in
40 subdivision (a).

1 ~~(k) The Office of Ratepayer Advocates shall have authority to~~
2 ~~advocate on behalf of video subscribers regarding renewal of a~~
3 ~~state-issued franchise and enforcement of this section, and Sections~~
4 ~~5890 and 5950. For this purpose, the office shall have access to~~
5 ~~any information in the possession of the commission subject to all~~
6 ~~restrictions on disclosure of that information that are applicable~~
7 ~~to the commission.~~

O